Court, U.S.
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No. 03-730 NOV 17 2003

In The
Supreme Court of the United States

FRANCIS SHARPE,

Petitioner,

vs.

ROMAN CATHOLIC DIOCESE OF DALLAS; CHARLES V. GRAHMANN, Reverend, His Predecessors, Successors, as Bishop of the ROMAN CATHOLIC DIOCESE OF DALLAS; WINDLE TURLEY; RANDAL MATHIS; and MONTE FITE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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88 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does *Rooker-Feldman* bar suit when parties to a state court suit violate a non-party's federally conferred civil rights under color of state law by using the state judicial process to seize a person's property at a deposition, thereafter, place it in the custody of a state court without a determination of ownership, and then utilize the state judicial process and the litigant's efforts to exhaust his lengthy state judicial remedy until such time as the court of appeals determines that while the property was in *custodia legis*, the cause of action for conversion expired even though the state court order which initially impounded the property was void?

2. Does *Rooker-Feldman* insulate state actors from suit under 42 U.S.C. §§ 1983 and 1985 when private state actors joint participation with state officials in the seizure of disputed property simply because the state court proceeding is resolved against the aggrieved party on a limitations issue despite invoking all state processes to correct the wrongful seizure?

3. Does *Rooker-Feldman* bar a litigant from suing private individuals as state actors who utilized state action to violate 42 U.S.C. §§ 1983 and 1985 when the state action utilized by the actors is the core of the 1983 and 1985 action, particularly when the federal claims are not an attack on the judgment of the state court because the state action in and of itself (by reason of the state actor's use of the judicial process) forms the basis of constitutional violations?

4. Does *Rooker-Feldman* doctrine bar suit alleging violations of Federal Constitutional Law when the state court action is itself, because of the activity of the private state actors, a violation of federal law under color of state law?

QUESTIONS PRESENTED FOR REVIEW – Continued

5. Does the *Rooker-Feldman* doctrine bar a litigant from suing state actors for violations of Civil Rights under color of state law when the state actors utilize the state judicial process to deceitfully deprive a person of property using a deposition subpoena, impound the property using a void state court order to conceal evidence of crimes, prevent the evidence from being published and/or turned over to law enforcement authorities?

6. Does *Rooker-Feldman* bar a litigant from suing for violations of civil rights under color of state law simply because the litigant sought in the federal court an injunction to prevent destruction of items he obtained from the open dumpster of some of the private state actors?

7. Can a Rule 12(b)(1) Motion be granted based on the *Rooker-Feldman* doctrine when the Plaintiff in federal court alleges U.S. Constitutional violations by state actors and without addressing the merits of the Plaintiff's federal claims that the state actors used a state judicial proceeding to suppress evidence of crimes and other violations of Federal Civil Rights?

8. Can a Rule 12(b)(1) Motion be granted merely because the Movant claims *Rooker-Feldman* jurisdictional bar and without the federal trial court addressing the validity of the Plaintiff's federal claims and without ever determining if the Plaintiff's federal claims can be addressed and a remedy fashioned for the Plaintiff without doing any violence to the state court rulings?

PARTIES TO THE PROCEEDING

The following is a list of all parties to the proceedings in this case in the United States Court of Appeals for the Fifth Circuit:

1. Francis Sharpe, Appellant-Petitioner
2. John E. Wall, Jr., Attorney for Appellant-Petitioner
3. Roman Catholic Diocese of Dallas, Appellee-Respondent
4. Reverend Charles V. Grahmann, His Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas, Appellee-Respondent
5. G. Dennis Sullivan, Sullivan, Ave & Holston, Attorney for Appellees-Respondents, Roman Catholic Diocese of Dallas and Reverend Charles V. Grahmann
6. Windle Turley, Appellee-Respondent
7. Thomas B. Cowart, Attorney for Appellee-Respondent, Windle Turley
8. Randal Mathis, Appellee-Respondent
9. Mark M. Donheiser, Attorney for Appellee-Respondent, Randal Mathis
10. Monte Fite, Appellee-Respondent (*Pro se*)

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in Case No. 02-11204 affirmed the decision of the United States District Court for the Northern District of Texas, which granted the Rule 12(b)(1) Motion to Dismiss, of the Respondents Roman Catholic Diocese, Charles V. Grahmann, and Randal Mathis claiming the *Rooker-Feldman* doctrine presented a jurisdictional bar to the claim. Turley and Fite's Motion to Dismiss claiming lack of service of process (while dodging service) was denied as moot. The Fifth Circuit issued an unpublished Opinion dated August 18, 2003 and is reprinted here as App. 1-3. The District Court's September 27, 2002, Judgment and Memorandum Order are printed here as App. 4-16. The State Court Appellate Opinion and Judgment forming the basis for applying the *Rooker-Feldman* doctrine is App. 17-29. The State Appellate Court Opinion which forms part of Sharpe's federal causes of action is printed here as App. 30-37.

The plaintiff's second amended complaint upon which the trial court granted the Rule 12(b)(1) Motion is App. 38-55.

STATEMENT OF JURISDICTION

This Petition for a Writ of Certiorari seeks review of the opinion of the United States Court of Appeals for the Fifth Circuit entered on August 18, 2003.

Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1). This Petition for Certiorari is timely filed pursuant to 28 U.S.C. § 2101(c).

APPLICABLE RULES AND STATUTES

2. Federal Rules of Civil Procedure Rule 12(b)(1).

2. The statutes applicable to this case are as follows:

42 U.S.C. § 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985 Conspiracy to interfere with civil rights

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or

to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object property, or deprived of having and exercising any right or privilege of a

citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. § 1980).

STATEMENT OF THE CASE

Petitioner, Francis Sharpe ("Sharpe"), brought suit against the Respondents for violations of his civil and constitutional rights under 42 U.S.C. § 1983; 42 U.S.C. § 1985 subsections (2) and (3) and the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. (R 109-125) The Roman Catholic Diocese, Rev. Charles Grahmann and Randal Mathis filed a Joint Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and Fed. R. Civ. P. 12(b)(6) for failure to state a cause of action. (R 126-47) Sharpe timely filed a response to the motion. (R 163-94)

Finding that there was no subject matter jurisdiction, the district court granted the Rule 12(b)(1) Motion[1] and dismissed each of Sharpe's claims as to all Respondents[2] in an Opinion and Judgment signed September 27, 2002.

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[1] Because the district court determined that it did not have subject matter jurisdiction, the district court did not rule on the Rule 12(b)(6) Motion. (R 312)

[2] At the time the Motion to Dismiss was filed, Respondents Windle Turley and Monte Fite had not yet filed an Answer or appeared in the case. Because it was evident that Turley and Fite were evading service of process, Sharpe filed a Motion for Substitute Service. (R 148-60)

As set forth in Sharpe's Second Amended Original Complaint the following are undisputed facts: (R 111-21)

In July 1997, Sharpe began retrieving items (documents, notes, memos, etc.) from the dumpster located adjacent to the Diocese. (R 111) Sharpe continued to retrieve items from the dumpster, and items from bags which had fallen from the dumpster, until December 1998, with no complaint from the Diocese.[3] (R 111) The dumpster was not enclosed by a fence or other structure.[4] (R 111)

After accumulating the evidence from in and around the dumpster (the refuse would often be contained in plastic bags, sometimes opaque and sometimes clear, and on some occasions was contained within open cardboard boxes), Sharpe would take the refuse home, separate it, and organize it. (R 111-12) Sharpe discovered that many of the items he had retrieved from the Diocese dumpster were clearly damaging to the Diocese with respect to then ongoing litigation involving the Diocese, *Rudy Kos* and the *John Doe* Plaintiffs, to wit: the paperwork the Diocese was throwing away was evidence relevant to the *Kos* case, and therefore, the Diocese was destroying evidence. (R 112) The documents reflected other acts of pedophilia and child abuse by Catholic Priests, knowledge of pedophilia by the Diocese and efforts by the Diocese to influence the Texas state judicial process during and after the *Kos* trial. (R

[3] Prior to December 1998, the Diocese never advised Sharpe that he could not retrieve the items that the Diocese had clearly thrown away. (R 111) Once the Diocese told Sharpe not to retrieve items from the dumpster, Sharpe never returned to the dumpster. (R 111)

[4] During this same period of time, other people were also rummaging through the dumpster without complaint from the Diocese. (R 111)

112) Sharpe segregated and separated the items, ultimately cataloging them and organizing them in his own fashion so as to be able to expose the vagaries (unlawful conduct) of the Diocese. (R 112)

After the verdict in the *Kos* trial, but prior to entry of Judgment, the Diocese filed a Motion to Recuse Texas State Judge Ann Ashby, who tried the case with a jury, from further involvement in the *Kos* case. (R 112) After the Motion to Recuse Judge Ashby was filed, but prior to the hearing on the Motion, Sharpe identified a document taken from the dumpster which later became known as the "Tower Club memo." (R 112) Prior to the hearing on the Motion to Recuse Judge Ashby, Sharpe provided to the Plaintiffs' attorneys in the *Kos* case a copy of the Tower Club memo. (R 112) The Tower Club memo is, in reality, minutes of a meeting/advisory group to Bishop Grahmann dated August 11, 1997 which evidences illegal ex parte influence on the Texas State judiciary by the Diocese. The memo reflected the assurance of the administrative judge (a catholic) that Judge Ashby would be removed from the case. (R 112) The memo in essence stated the administrative judge would make certain Judge Ashby would be recused. Sharpe continued to provide documents to the Plaintiffs' attorneys in the *Kos* case following the disclosure of the Tower Club memo. (R 112)

Windle Turley was one of the attorney's representing the Plaintiffs in the *Kos* case. (R 112) Beginning early in 1997, Turley used an intermediary, Monte Fite, and attorneys who worked for Turley to communicate with Sharpe. (R 112-13) Fite identified himself to Sharpe as a "go between" for Turley. (R 113) Sharpe was told by Fite not to contact Turley directly, but to contact Fite through Turley's Law Office. (R 113) Fite went to Sharpe's residence, many times

with lawyers from Turley's office, to review the evidence Sharpe possessed regarding the Diocese's knowledge of pedophilia by members of the Diocese, child abuse, destruction of evidence of assets, telephone messages between a Texas state judge and the Diocese, and the ability of the Diocese to satisfy the approximate 126 million dollar verdict and Judgment in the *Kos* case. (R 113) Sharpe provided some of the information to Fite which Fite told Sharpe he would then provide to Turley. (R 113) Sharpe had retained a lawyer, Joseph Ashmore, to assist him with his situation and problems with the Diocese's conduct. (R 113) In and around March 1998, Fite prepared a letter for Sharpe to send to Ashmore terminating that relationship. (R 113)

After Ashmore's representation of Sharpe was terminated, Fite and others purportedly on behalf of Turley "prepared" Sharpe for his upcoming deposition in the *Kos* case. (R 113) Sharpe was advised that if asked how he got the documents from the dumpster, to respond that it was a "simple trespass".[5] (R 113)

Turley then subpoenaed Sharpe to produce documents at a deposition on or about April 30, 1998 for use in the *Kos* litigation. (R 113) Accordingly, Sharpe appeared at Turley's office and provided documents, which he had retrieved from the dumpster and other places, which reflected the illegal evidence destruction by the Diocese, evidence of other acts of pedophilia by other Diocesan

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[5] This advice was given despite knowing no trespass had occurred because the dumpster was not posted "No Trespassing", nor had anyone advised Sharpe that he could not retrieve items from in and around the dumpster. (R 113)

Priests, possible aggravated perjury and sexual perversion which existed within the Diocese. (R 113-14) In the deposition stipulations, and on the record during the deposition of Sharpe, Turley represented to Sharpe, with Randal Mathis present (then attorney for the Diocese), that Sharpe would always have access to the records and that copies would be made and the originals returned to Sharpe. (R 114) Turley also maintained to Mathis that the documents were clearly Sharpe's, that the Diocese had abandoned any ownership right and that Mathis and the Diocese were out of luck in getting them back. (R 114)

Nevertheless, the items were not returned to Sharpe as promised by Turley and the other lawyers present at Sharpe's deposition, including Randal Mathis, Dennis Sullivan and George Bramblett. (R 114) Thereafter, Turley, the Diocese, and others settled the *Kos* litigation on or around July 11, 1998. (R 114)

After learning about the *Kos* settlement from *The Dallas Morning News*, Sharpe received a letter on or about July 16, 1998 from the Law Offices of Windle Turley stating:

> We are turning over the documents *you* brought to us to Mr. Mathis. *We* will be filing a Motion with the Court to request that these documents be returned to you, but until the time of that hearing and subsequent ruling, Mr. Mathis will have possession of these documents. (emphasis added) (R 114)

Thus, the documents were given to Mathis by Turley, although Turley had not obtained permission from Sharpe to do anything other than copy the documents and return them to Sharpe. (R 114) Despite Turley's representation

that he would move the Court for the return of Sharpe's documents, Turley never filed such a Motion. (R 114) Instead, Sharpe filed a *pro se* Motion for return of the documents, which the Diocese fought. (R 114-15)

Ultimately, in April 1999, long after any case or controversy amongst the parties to the *Kos* litigation had been resolved, Judge Ann Ashby of the 134th Judicial District Court of Texas, at the request of the Diocese and its lawyers, ordered the documents placed in receivership with an attorney named Paul Lockey. (R 115) Lockey then rented a storage unit in Dallas, Texas[6], on which Randal Mathis was listed as a contact person (and thus had potential ability to access the documents). (R 115) Sharpe was not provided with a key to the storage unit.

Sharpe appealed Judge Ashby's Order (Petition for a Writ of Mandamus), and finally the Dallas Court of Appeals, in a January 9, 2001 Opinion, concluded that the trial court lacked jurisdiction to order the documents be sent to Lockey and ordered that the documents be returned to the person last in possession of the documents.[7] (R 115) In its Opinion, the Dallas Court of Appeals stated that the Diocese and Sharpe should be parties to a lawsuit to determine ownership. (R 115) App. 30-37.

As suggested by the Court of Appeals, Sharpe promptly sued the Diocese, Rev. Grahmann, Mathis, Bramblett, Haynes and Boone and Windle Turley for

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[6] When Mr. Lockey rented the unit, he obtained three (3) keys. To date, it is unknown why Mr. Lockey obtained so many keys. (R 115)

[7] On February 7, 2001, Judge Ashby vacated her prior Order and complied with the mandate from the Court of Appeals. (R 115)

conversion, fraud and other state law claims to regain the documents Sharpe took from the dumpster. (R 115) That case was filed in the 44th Judicial District Court, Dallas County, Texas and was ultimately presided over by Judge Joe D. Clayton.[8]

After service of the subpoena and Turley's receipt of 36 million at the time he turned over Sharpe's documents to the Diocese, the Respondents first utilized Judge Ashby to deprive Sharpe of the documents (when she clearly had no jurisdiction over Sharpe or any case or controversy). The Respondents subsequently engaged in ex parte communication with Judge Clayton in the state court proceeding, prevailed upon Judge Clayton to prohibit most any sort of discovery, obtained rulings from Judge Clayton to prevent Sharpe from copying the documents, continued to ignore all of the representations previously made to Sharpe at the *Kos* deposition, and prevailed upon Judge Clayton to grant summary judgment in the state case as to all claims by finding that the documents were not "legally abandoned" (even though clearly thrown away by the Diocese in a non-secured dumpster open to the general public).[9] (R 117) It is beyond dispute that this conduct

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[8] On November 21, 2001, written demand was also made on the Defendants-Appellees for the return of the items, but the Defendants-Appellees refused to comply with the agreement made at the deposition. (R 116) To date, the documents have not been returned to Sharpe. (R 116)

[9] Judge Clayton granted summary judgment on Sharpe's state court claims on March 15, 2002. (R 190) Sharpe appealed this ruling and the Court of Appeals, Fifth Supreme Judicial District, apparently unwilling to dissect the significance of "legal abandonment" affirmed as to all claims except the claim against Turley for fraud. Reasoning while the documents were *custodia legis* Sharpe could sue the Diocese for

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occurred with Judge's Clayton's active and/or passive participation and approval. (R 117)

Because of the Respondents' improper utilization of the state judicial system to violate Sharpe's federally conferred constitutional and civil rights, on March 18, 2002, Sharpe filed the instant case against the Respondents under 42 U.S.C. § 1983[10] and § 1985(2)[11] and (3)[12]. (R

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conversion and since he did not do so within two years he was time barred. App. 17-28.

[10] Sharpe brought suit under 42 U.S.C. § 1983 for violations of his federally protected constitutional rights, including: (1) his Fifth and Fourteenth Amendment right to due process of law; (2) his Fourth Amendment right to be free from unreasonable seizure; and (3) his First Amendment right to freedom of speech. (R 121) The Respondents' conduct violated Sharpe's well established constitutional rights and the Respondents failed to act in an objectively reasonable manner based on the clearly established law at the time Sharpe's property was unlawfully seized and taken from him. (R 121) The deprivation of Sharpe's constitutional rights occurred while the Respondents were acting under color of state law, were state actors and that the Respondents abused the State judicial process with active participation and/or passive approval of Judge Ashby and Judge Clayton as described above. (R 121)

[11] The Respondents conspired for the purpose of impeding, hindering, obstructing or defeating the due course of justice in the State of Texas with the intent to deny Sharpe the equal protection of the laws, or to injure Sharpe or his property for lawfully attempting to enforce Sharpe's rights to equal protection of the law in violation of 42 U.S.C. § 1985(2). (R 120) This conduct constituted a conspiracy to obstruct justice. (R 120) The object of the above described conspiracy in violation of § 1985(2) and (3) was to deprive Sharpe of equal protection under the laws because of his religion, *i.e.*, he was not a "good Catholic" and a witness in the *Kos* case. (R 120)

[12] The Respondents conspired for the purpose of depriving Sharpe, either directly or indirectly, of the equal protection of the laws including Sharpe's First Amendment constitutional right to freedom of speech in violation of 42 U.S.C. § 1985(3). (R 119) The Respondents utilized the judicial system of the State of Texas to effectuate a conspiracy and prior

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109-25) In short, the Respondents stole from Sharpe that which they had clearly abandoned and then utilized a state court judge to perpetuate the theft and violate Sharpe's constitutional rights. The state trial court rulings granting summary judgment and the affirmance by the Court of Appeals Fifth District, Texas, of Sharpe's state law causes of action only ripened Sharpe's causes of action under 42 U.S.C. § 1983 and § 1985(2) and (3). App. 17-37.

Nevertheless, the district court in this case granted the Respondents' Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) for Want of Subject Matter Jurisdiction. (R 300-12, 313) The district court essentially determined that it lacked subject matter jurisdiction because it found the case constituted a collateral attack on the judgment of the state court case. (R 311-12) App. 1-16. The Fifth Circuit affirmed, this was error.

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restraint by using the deposition process for an unlawful purpose (theft), seeking the appointment of a receiver and order of impoundment through Judge Ashby, and the resulting legal sojourn which Sharpe has been forced to trek until this day. (R 120) The Respondents conspired to unlawfully dispossess Sharpe of his property and prevent his further access to the documents by using the State judicial system, *i.e.*, the deposition subpoena and subsequent proceedings before Judge Ashby, the Dallas Court of Appeals and Judge Clayton to cause injury to Sharpe, deprive him of his property and violate his First, Fourth, Fifth and Fourteenth Amendment Constitutional rights. (R 120) Sharpe was the owner of the documents at the time of the deposition and has been deprived of their use by the Respondents' abuse of the State Judicial Process. (R 120)

REASONS FOR GRANTING THE WRIT

1. **The Fifth Circuit's Opinion while embracing the *Rooker-Feldman* doctrine eviscerates this Court's decision in *Lugar v. Edmonson Oil Co., Inc.*, 457 U.S. 922 (1982) and this Court's Opinion in *Mitchum v. Foster*, 407 U.S. 225 (1972); reasoning the claim is inextricably intertwined with the state court Judgment. This action's success does not depend on a determination that the state court wrongly decided the issues before it. This case only requires a determination of whether the state actors can subpoena property and deprive a person of its use without a hearing and force the person into a state law legal process simply because he removed discarded items from a dumpster open to the public.**

The failure to exercise jurisdiction over the case by the federal trial court and the Fifth Circuit's affirmation of the trial court's opinion permits the Defendants below to utilize a state judicial process, *i.e.*, a subpoena to take evidence of criminal conduct regarding the Dallas Diocese from a non-party to the underlying case; impound them by Order of a state trial court who had no jurisdiction to act; force Sharpe to petition the state appellate court for a Writ of Mandamus to void the trial court's order of seizure issued without jurisdiction, then force Sharpe into a property dispute lawsuit over the evidence; all the while knowing that the Diocese had clearly abandoned the property by throwing it in the dumpster and force Sharpe to exhaust his State Appellate remedies. All of this activity was conducted by the Defendants below under color of state law acting as private state actors, by forcing Sharpe to file suit to try to regain the documents/evidence he had

obtained from the Diocese dumpster, and permitted the Diocese to conceal evidence of criminal wrongdoing, the obstruction of justice and the restraint of free speech, while utilizing the state judicial process to achieve the result *i.e.*, take back that which they had discarded and hoped would be buried in a landfill. After Windle Turley gained control of the evidence using a state court subpoena, he sold them to the Diocese without ever having received a determination as to Sharpe's ownership rights.

The refusal to exercise jurisdiction over this case permits the Defendants below to be state actors utilizing a state subpoena and judicial system to obstruct justice, restrain free speech and seize property without due process. This federal action does nothing to attack the state court's judgment because in actuality, the state court's judgment is the product of the state actors' violative conduct. This action will do nothing to affect the decision by the state trial court (although clearly erroneous) or the Court of Appeals but rather will merely permit Sharpe to either temporarily possess and copy the documents, or award Sharpe damages in the event that this chicanery of the state actors resulted in destruction of what Sharpe once held for several months without complaint until the Diocese learned its lurid content was public because of their ignorance of *California v. Greenwood,* 486 U.S. 35 (1988).

If the *Rooker-Feldman* doctrine would bar such a case as suggested, a party to a civil action in state court could bribe a judge; obtain a favorable state court judgment in exchange; conceal the bribe; and while appeals are ongoing and exhausted, then the unwitting victim who later discovered the bribe would be barred from suit under 42 U.S.C. § 1983 and § 1985. Of course such conduct would be

a violation of federally conferred rights under color of state law. In such an instance, the litigant would have no remedy if *Rooker-Feldman* would bar the action. It is the underlying state court action in and of itself, which was perpetrated by state actors that gives rise to a violation of federally conferred rights under color of state law. The notion that a § 1983 or § 1985 action complaining of such conduct is so inextricably intertwined with the state court action, that review is denied, is obviously erroneous. The idea that such underlying state actor action would be inextricably intertwined and thereby deprive the litigant of a cause of action ignores the reality that the underlying action is what gives rise to the offense which creates a right of action under 42 U.S.C. § 1983 and § 1985. In other words, it is the underlying state court action which created the federal cause of action. More importantly, the federal court sitting in equity, can fashion a remedy which would not interfere with the state court's opinions. The federal trial court could order inspection and copying of the documents without disruption or adjudication of ownership. The federal trial court could permit Sharpe a trial on the merits and potentially award Sharpe compensatory damages, punitive damages or any other remedy which the Court determines would correctly address the violations made the subject of this suit.

Without even an opportunity to inspect what was taken by way of the subpoena, the dismissal of this case once again predetermines Sharpe's rights. The application of *Rooker-Feldman* to this case presupposes the state actors did not violate Sharpe's federally assured civil rights without ever having to join issue. Specifically, Sharpe retrieved documentation of the Diocesan wrong doing which was clearly abandoned property, inasmuch as,

the Diocese had thrown the documentation away into a dumpster, which was indisputably openly and easily accessible to the public. The documents were not shredded nor had any effort been expended to maintain any of the documents as private. Instead, they were thrown away for the world to see.

After Sharpe had retrieved the documents, he possessed them for several months if not a year without complaint. Then when it became known that he possessed them, he was subpoenaed by Windle Turley to appear at a deposition, and testified as to how he came to own them. At the deposition, Turley and Mathis agreed to copy and return the items in question to Sharpe. Despite this representation of these officers of the court, nothing was returned to Sharpe but rather the Respondents combined and conspired, under color of state law, to steal the abandoned property from Sharpe. The Respondents utilized the state subpoena power to initially deprive Sharpe of his property and subsequently used the state judiciary to perpetuate this theft. As a result, Sharpe was deprived of his property, and concomitant right to the use of his property, in violation of his rights under Federal law and the Constitution of the United States, in particular the First, Fourth, Fifth and Fourteenth Amendments, and 42 U.S.C. §§ 1983 and 1985(2) and (3). As such, the district court clearly had subject matter jurisdiction over the claims and Sharpe's Complaint set forth facts which stated a cause of action. Therefore, it was error to dismiss this case under either Rule 12(b)(1) or 12(b)(6).

The Fifth Circuit in its opinion concluded because Sharpe requested a declaratory judgment of property rights he was barred by *Rooker-Feldman*. The right to ownership was never addressed on appeal by the state

appellate courts obviously realizing the folly of Judge Clayton's concept of "legal abandonment".

Because the State Court of Appeals did not address the issue of ownership nor the Texas State Supreme Court, that issue is left ambiguous at best. Nevertheless, just because Sharpe prayed for something does not mean he would get it nor would the federal court have to decide such. Copies will suffice. The federal trial court and the Fifth Circuit failed to recognize this Court's opinion in *Bell v. Hood,* 327 U.S. 678 (1946) when this court concluded that jurisdiction is not defeated by possibilities. The possibility that the state's judicial systems' rulings may be called into question rather than challenged as an appeal, does not invoke *Rooker-Feldman*.

The district court erroneously dismissed Sharpe's 42 U.S.C. §§ 1983 and 1985 claims pursuant to Fed. R. Civ. P. 12(b)(1) for want of subject matter jurisdiction. (R 300-12, 313) Specifically, the district court held that "boiled down to its essentials", the relief sought by Sharpe was "simply a reversal of the summary judgment rendered against him in the state court". (R 311) The district court then opined that Sharpe's federal complaint was therefore "inextricably intertwined with the state court's denial of relief" and "must" be dismissed for want of subject matter jurisdiction. (R 311-12) Because Sharpe questions the propriety of the state court's decision does not mean he seeks a reversal, he merely wants to redress the violations he suffered under color of state law. One of those violations involve his free speech right to publish what he pulled from the dumpster whether an original or copy of the originals. That will cause no violence to the "legally abandoned" theory which the appellate courts side-stepped.

In making these findings, the district court and the Fifth Circuit relied on the "*Rooker-Feldman* doctrine". (R 307-312) Under the *Rooker-Feldman* doctrine, this Court has reasoned federal district courts lack jurisdiction over collateral attacks on a state court judgment. *See Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 416, 44 S.Ct. 149, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L. Ed. 2d 206 (1983). This court held in *Feldman* that only when issues raised in a federal court are inextricably intertwined with the merits of state court judgment and the federal court is being called upon to review the state court decision does the federal court lack subject matter jurisdiction under *Rooker-Feldman*. Under *Feldman*, a claim is "inextricably intertwined" with the state court judgment if it requires review of a final judgment in a state court proceeding. *Feldman,* 460 U.S. at 486-87; *see also Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 107 S.Ct. 1519, 1529-31, 95 L. Ed. 2d 1 (1987) (Concurring Opinion of Justice Marshall noting that the question of whether a federal claim is inextricably intertwined with a state court judgment is sometimes difficult to answer, but that it is apparent that a claim is "inextricably intertwined" if the federal claim can only be predicated on a conviction that the state court was wrong). Thus, where a federal claim does not constitute a direct appeal of a state court judgment and does not require a finding as to the merits of a claim litigated or inextricably intertwined with the merits of the state court judgment, the *Rooker-Feldman* doctrine does not deprive the federal district court of subject matter jurisdiction. *See Rooker, Feldman; see also Pennzoil* (Concurring Opinion of Justice Scalia and Justice O'Connor noting that the "so-called *Rooker-Feldman* doctrine" was not an applicable bar to Texaco's § 1983 claim where the court need not have decided

any issue either actually litigated in the state court or inextricably intertwined with issues so litigated; Concurring Opinion by Justice Brennan that Texaco's § 1983 claim was not barred by the *Rooker-Feldman* doctrine because the action was filed to protect its federal constitutional rights, not to challenge the merits of the state suit).

As was held in *Feldman,* and discussed by Justices Scalia, O'Connor, Brennan, and Blackmun in their concurring Opinions in *Pennzoil,*[13] *if the constitutional issues asserted are separate from the state court claim and not dependent on a review of the merits of the state claim, then the federal court possesses subject matter jurisdiction over the federal claims.*

Additionally, it was error to dismiss Sharpe's § 1983 and 1985 claims under the *Rooker-Feldman* doctrine because the claims do not constitute a direct appeal of the state court judgment, nor are the claims inextricably intertwined with the merits of the state court judgment. The finding that the federal court lacked jurisdiction, ignores the very factual basis for the causes of action under § 1983 and § 1985.

It is the willingness of the Respondents to treat the U.S. Constitution and all that it signifies with such contempt, that imposes liability and confers federal question jurisdiction on the district court. In short:

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[13] In *Pennzoil,* the Opinion of the Court did not rule on the appellate court's rejection of the applicability of the *Rooker-Feldman* doctrine to the case.

(1) Sharpe obtained clearly abandoned property and held onto it for months;

(2) Turley subpoenaed the documents from Sharpe (nothing was subpoenaed from the trash truck drivers);

(3) In Sharpe's deposition in the *Kos* case, Turley and Mathis stipulated on the record to copy and return the documents to Sharpe (that representation obliterated Sharpe's need to copy);

(4) Turley settled the *Kos* litigation with the Diocese;

(5) Turley then gives Sharpe's property (which was supposed to have been copied and returned to Sharpe) to the Diocese;

(6) The Diocese pays Turley and his clients $36 million even though the Diocese maintained all of Turley's clients' claims were clearly time-barred;

(7) Mathis possesses the documents for several months, before asking Judge Ashby to order the documents be delivered to Paul Lockey;

(8) The Diocese *never* in *any* proceeding sued for replevin and never claimed a privilege from disclosure that was ruled upon by the State Court.

Acceptance of the district court's decision and Fifth Circuit affirmance that there is no jurisdiction over Sharpe's § 1983 and § 1985 claims based on *Rooker-Feldman,* would permit a lawyer to subpoena cash from a third party at a deposition, pocket it and tell the witness "you have no recourse here, so just sue me and I will

privately call the judge and when you do I will rig the outcome." Surely, the U.S. Constitution does not permit that sort of action.

Moreover, the conduct of the Respondents deprived Sharpe of the opportunity to copy and publish the documents and deprived him of all the time and money he expended in cataloguing and archiving the clearly abandoned property. The Respondents stole not only the paperwork, but also stole Sharpe's invested time, gasoline, storage expense, cleaning of the coffee grounds and cigarette butts from the paper and sorting of the documents by author. Undoubtedly, Sharpe's labor has value which the Respondents stole.

The Respondents and the state trial court were in complicity at the very least. The Defendants below as state actors ignored all federal law, and used the subpoena and judicial process to dispossess Sharpe. Significantly, the outcome of the appeal in the state court case is not dispositive of Sharpe's federal claims, nor are the federal claims predicated on a finding that the state court decision to dismiss Sharpe's claims via summary was wrong. There is simply no need to review the judgment in Sharpe's state court case to find in favor of Sharpe on his federal claims.

Unlike *Rooker-Feldman*, this case does not seek review of the rulings nor does it seek to collaterally attack the state court judgment. Rather it is the use of the state court system and the chicanery of the state actors, to perpetuate the fraud and deprive Sharpe of his constitutional rights that violates the federal statutes. Whether Sharpe prevails or not in his state court case is of no matter to the viability of his federal causes of action because the federal causes of action were created by the

fact that the state court proceedings *existed* (not the outcome). As asserted in Sharpe's complaint, not only did the Respondents steal the physical property, but Sharpe's time and money invested was taken as well.

It is not necessary for the federal trial court to acquire exclusive possession of the documents to determine that Sharpe's federal rights were violated. In fact, that the state court possesses the documents supports Sharpe's federal claims (as set forth in his Complaint) that his federal rights under §§ 1983 and 1985 have been violated with respect to the documents. A purpose of Sharpe's request for injunctive relief (*i.e.*, the request for the transfer of the documents to a federal marshal) arises from a continual threat that the documents will be destroyed by the Respondents (if they have not been already), as well as the fact that Sharpe maintains that the state court never had proper jurisdiction to retain the documents which the Court of Appeals found in the mandamus. After all, the Respondents took the items from Sharpe, impounded them using Judge Ashby (although her jurisdiction had expired) and never sought to determine if the Diocese had any property rights at all to the documents. The issuance of an injunction would do nothing but maintain the status quo. *See Mitchum v. Foster*, 407 U.S. 225 (1972).

Whether the state court even has proper custody of the documents is yet to be determined. As set forth in the Complaint and confirmed by the Dallas Court of Appeals, the documents were initially placed in the possession of the court receiver, Paul Lockey by Judge Ashby at a time when Judge Ashby lacked jurisdiction. Judge Clayton later *sua sponte* ordered the documents transferred to the custody of Special Master Former Judge Frank Andrews, where the documents, it is believed, remain to date. Sharpe was denied

the opportunity to even copy the paperwork. Regardless, the Respondents, in neither the state court proceeding nor any other proceeding, have ever sued for return of the documents which were retrieved by Sharpe after the Diocese threw them away; to this day they remain in legal limbo.

In their Motion, the Respondents did not dispute any of the Petitioner's claims; rather the Respondents claimed Sharpe stole their trash. In reality, the worst thing Sharpe did was lighten the load for the trash truck driver. And lighten it he did, to the tune of forty-eight boxes and large garbage bags full of extremely incriminating evidence authored by the Diocese, their lawyers, advisers and pedophiliac priests which evidence was thrown away in such wholesale fashion that the documents were intact. Among those items are phone messages evidencing ex parte communications with state court judges, handwritten memos and other acts of pedophilia and letters probative of aggravated perjury by the Diocese during the *Rudy Kos* litigation. Apparently the Defendants below believe that they should (sanctimoniously) enjoy more rights and privileges than the dope peddlers in *California v. Greenwood*, 486 U.S. 35, 108 S.Ct. 1625, 100 L. Ed. 2d 30 (1988) (holding that there is no right of privacy in trash).

The Fifth Circuit's affirmance ignores the fundamental precept that a Complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to any relief. *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957).

SHARPE'S FEDERAL CAUSES OF ACTION

The Respondents argued in their Motion that claims under both §§ 1983 and 1985 require a showing of "state action" and that Sharpe had not satisfied that requirement. Clearly, Sharpe pled, and the facts support, the requisite "state action." It is undisputed that Sharpe possessed the discarded evidence for several months before Turley issued the subpoena, that the subpoena was issued under color of state law, that Turley possessed the evidence for approximately two months without any effort by the Diocese to regain the documents (or subpoena them from Turley), and Mathis held the documents for several months before his vagarious effort to have the state court hide the evidence by placing it in the hands of Paul Lockey.

That there was an agreement between Turley and Mathis to return the evidence to the Diocese wrongdoers is beyond dispute. This agreement was made without Sharpe's knowledge even though all the lawyers involved told Sharpe and stipulated in the state court record that all of the items would be returned to Sharpe. It is well settled that private party co-conspirators and their lawyers acting under color under state law can be sued for damages in a § 1983 action when they involve a judge in their plot, regardless of whether the judge can be brought to justice for his part in the scheme *See Sparks v. Duval County Ranch Co.,* 604 F.2d 976, 983 (5th Cir. 1979), *aff'd sub nom. Dennis v. Sparks,* 449 U.S. 24 (1980).

It is undisputed that Turley obtained the documents by a subpoena issued under color of state law. It is likewise undisputed that Randall Mathis sought to have and did have Judge Ashby impound Sharpe's property by appointing Paul

Lockey as Special Master when Judge Ashby clearly had no jurisdiction to act. It is also beyond dispute that Mathis fought return of the documents when Sharpe petitioned for a Writ of Mandamus. Defendants claimed the trial court had jurisdiction over Sharpe, a stranger to the *Kos* litigation. this was done several months after the case was resolved and there was no case or controversy between the parties in the state trial court.

Clearly Mathis, his client, Turley and the other lawyers conspired to deprive Sharpe of his property, without due process of law, to keep him from speaking and stole from Sharpe, all the while using the state judicial system to perpetuate their acts. It is long recognized that a lawyer may be a state actor for purposes of liability under § 1983 if he employs the state to enforce or effectuate a state provided procedure. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 2754 (1982). If state actors conspire in such a way as to defeat or prejudice a litigant's rights in state court, such conduct amounts to a denial of equal protection of the laws by persons acting under color of state law. *See Ryland v. Shapiro*, 708 F.2d 967, 974 (5th Cir. 1983). Moreover, it has been recognized that state action exists when private parties act to compel state officials to enforce an illegal court order. *See Tompkins v. Cyr*, 878 F. Supp. 911, 916, 917 (N.D.Tex. 1995). The Respondent's conduct plainly constitutes "state action" and their prejudice of Petitioner's rights by use and abuse of the state court system has created this cause of action under § 1983 and § 1985.

The Respondents' Conduct also violated 42 U.S.C. § 1985. The Respondents argued that 42 U.S.C. § 1985 applies exclusively to cases involving racial bigotry (Def. Mot., p. 4); however, that issue is yet to be resolved by this

Court. *See United Brotherhood of Carpenters and Joiners of America, Local 610 AFL-CIO v. Scott,* 63 U.S. 825 (1983). Perhaps this will be the one to bring that question to bear.

CONCLUSION

For the reasons stated herein, Petitioner respectfully requests that this Honorable Court grant Petitioner's Writ of Certiorari, reverse the Judgments of the Court of Appeals for the Fifth Circuit and the District Court with instructions to remand the case consistent with this Court's instructions.

Respectfully submitted,

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Attorney for Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-11204
Summary Calendar

FRANCIS SHARPE,

Plaintiff-Appellant,

versus

ROMAN CATHOLIC DIOCESE OF DALLAS; CHARLES V. GRAHMANN, Reverend, His Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas; WINDLE TURLEY; RANDAL MATHIS; MONTE FITE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:02-CV-522-G

(Filed August 18, 2003)

Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Francis Sharpe appeals the district court's judgment dismissing his action under 42 U.S.C. §§ 1983 and 1985 for lack of jurisdiction under the *Rooker-Feldman* doctrine.[1] Sharpe argues that his federal action does not amount to an attack on the prior state court judgment because his federal claims are not inextricably intertwined with the merits of the state court suit.

Under the *Rooker-Feldman* doctrine, "[w]hen issues raised in a federal court are inextricably intertwined with a state judgment and the court is in essence being called upon to review the state-court decision, the court lacks subject matter jurisdiction to conduct such a review."[2] Although Sharpe argues that his federal suit differs from his state case because his federal complaint claims that the defendants violated his civil rights, "litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits."[3]

Sharpe's pleadings belie his argument that the *Rooker-Feldman* doctrine is inapplicable: His complaint specifically requests a declaratory judgment that certain discarded church documents belong to him and should be returned to him. The state court had previously granted

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[1] *See D.C. Court of Appeals v. Feldman,* 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923).

[2] *See Davis v. Bayless,* 70 F.3d 367, 375 (5th Cir. 1995) ("When issues raised in a federal court are inextricably intertwined with a state judgment and the court is in essence being called upon to review the state-court decision, the court lacks subject matter jurisdiction to conduct such a review." (internal quotation marks omitted)).

[3] *Hale v. Harney,* 786 F.2d 688, 691 (5th Cir. 1986).

summary judgment to the defendants on Sharpe's claims requesting return of the documents. Sharpe's federal action is clearly inextricably intertwined with the judgment in his prior state court case. Therefore, the district court's judgment of dismissal is AFFIRMED.

The motions to dismiss filed by defendants Turley and Fite are DENIED AS MOOT.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FRANCIS SHARPE, Plaintiff, VS. ROMAN CATHOLIC DIOCESE OF DALLAS, ET AL., Defendants.	)	CIVIL ACTION NO. 3:02-CV-0552-G

JUDGMENT

(Filed Sep. 27, 2002)

This judgment is entered pursuant to F.R. Civ. P. 58 and the memorandum order of this date. For the reasons stated in that memorandum order, it is **ORDERED** that this case is **DISMISSED** for lack of subject matter jurisdiction and that the defendants recover their costs of court.

September 27, 2002.

/s/ A. Joe Fish
A. JOE FISH
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FRANCIS SHARPE, Plaintiff, VS. ROMAN CATHOLIC DIOCESE OF DALLAS, ET AL., Defendants.	)	CIVIL ACTION NO. 3:02-CV-0552-G

MEMORANDUM ORDER

(Filed Sep. 27, 2002)

Before the court is the motion of the defendants – the Roman Catholic Diocese of Dallas ("the Diocese"), the Reverend Charles V. Grahmann ("Grahmann"), together with his predecessors and successors, as Bishop of the Roman Catholic Diocese of Dallas, and Randal Mathis ("Mathis") – to dismiss, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), the second amended complaint of the plaintiff Francis Sharpe ("Sharpe"). For the reasons set forth below, the defendants' motion is granted.

I. BACKGROUND

In July 1997, Sharpe began retrieving various items (such as documents, notes, and other correspondence) from within and around a trash dumpster located adjacent to

the Diocese's building in Dallas, Texas. *See* Plaintiff's Second Amended Original Complaint ("Plaintiff's Complaint") at 3.[1] Sharpe would apparently recover these items, take them home, and catalog them in his own fashion. *Id.* at 3-4. He continued in this course of conduct until sometime in December 1998, when the Diocese learned of his activities and ordered him to cease. *Id.* at 3. Sharpe's "investigation" into the Diocese's dumpster was, according to him, conducted in conjunction with various federal agencies, including the Department of Treasury, Department of Justice, Internal Revenue Service, Federal Bureau of Investigation, and the Central Intelligence Agency. *See* Joint Motion for Summary Judgment of Defendants Roman Catholic Diocese of Dallas, Reverend Charles Grahmann, His Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas, Randal Mathis and Munsch Hardt Kopf and Harr, P.C. ("Summary Judgment Motion") at 3, *attached to* Motion to Dismiss Plaintiff's Second Amended Original Complaint ("Defendant's Motion") as Exhibit A. There is, however, nothing in the record to indicate that Sharpe has ever been a member of, worked on behalf of, or even been contacted by, any of these federal agencies. Sharpe also states that he was merely one of many individuals rummaging through the dumpster, which "was not enclosed by a fence or other structure . . . [or] . . . a 'No Trespassing' sign" to exclude the general public. Plaintiff's Complaint at 3. As a result of these dumpster expeditions, Sharpe claims that he

[1] Sharpe's second amended complaint contains two conflicting sets of numbered paragraphs. Therefore, to avoid confusion, the court will refer only to the relevant pages of the complaint rather than to any particular paragraph.

acquired several items that were "damaging to the Diocese" with respect to a pending suit involving Rudy Kos, the Diocese, and certain "John Doe" plaintiffs, and that such documents reflected "acts of pedophilia and child abuse by Catholic Priests, knowledge of pedophilia by the Diocese and efforts of the Diocese to influence the Texas State Judicial system during and after the *Kos* trial." *Id.* at 4.

After the verdict in the *Kos* trial but before the entry of judgment, the Diocese filed a motion to recuse Judge Ann Ashby, the presiding state judge, from any further involvement in the suit. *Id.* Just prior to the hearing on that motion, Sharpe claims to have turned over to plaintiffs' counsel in the *Kos* case a memorandum reflecting the minutes from an August, 1997 meeting of Grahmann's "advisory group," which included discussion of "potential ethical violations by lawyers and illegal ex-parte influence on the Texas State Judiciary by the Diocese." *Id.* Sharpe continued to provide allegedly incriminating documents to plaintiffs' counsel in *Kos,* including defendant Turley, who used defendant Fite and others as an intermediaries [sic] between himself and Sharpe. *Id.* at 4-5. Turley later subpoenaed Sharpe to produce additional dumpster documents at a deposition beginning on April 30, 1998. *Id.* at 5. During Sharpe's deposition, Turley – with Mathis (then attorney for the Diocese) present – stated that Sharpe would always have access to the documents and that the originals would be returned to him after copies were made. *Id.* at 6. The *Kos* litigation was settled on July 11, 1998. *Id.*

On July 15, 1998, Sharpe received a letter from Turley's office stating that he had transferred possession of the documents to Mathis but that a motion would be

filed to have the documents returned to Sharpe. *See* Summary Judgment Motion at 5. No such motion was ever filed. Plaintiff's Complaint at 6. On July 28, 1998, Sharpe filed an unsuccessful *pro se* motion in the state district court for the return of the documents. Summary Judgment Motion at 5. In April, 1999, Judge Ashby ordered the documents placed in receivership with attorney Paul Lockey ("Lockey"), who secured the documents at a storage facility in Dallas, Texas. Plaintiff's Complaint at 7. Sharpe was not provided a key to the storage unit. *Id.* Sharpe appealed the state court order to the Dallas Court of Appeals which, on January 9, 2001, ordered the documents returned to the person last in possession and concluded that the trial court lacked jurisdiction to turn the documents over to Lockey. *Id.* On February 7, 2001, Judge Ashby vacated the receivership order. *Id.*

Sharpe later filed suit in a state district court against the Diocese and various attorneys in the *Kos* litigation for conspiracy, conversion, fraud, and other state law claims. *Id.* On August 15, 2001, Grahmann, Mathis, the Diocese, and other defendants moved for summary judgment in that case on the ground that Sharpe had no legally recognized interest in the documents, which he scavenged from the Diocese's dumpster, and that such documents were therefore the sole property of the Diocese. *See* Summary Judgment Motion at 5-7. The state court granted that summary judgment motion on March 15, 2002. *See* Order on Joint Motion for Summary Judgment of Defendants Roman Catholic Diocese of Dallas, the Reverend Charles V. Grahmann, his Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas, Randal Mathis and Munsch Hardt Kopf and Harr, P.C. ("Summary Judgment Order") at 2, *attached to* Defendant's Motion as

Exhibit B. Sharpe filed a notice of appeal challenging the state court ruling on April 12, 2002. *See* Plaintiff's Notice of Appeal, *located in* Plaintiff's Appendix in Support of Plaintiff's Response to the Motion to Dismiss Plaintiff's Second Amended Original Complaint of the Roman Catholic Diocese of Dallas, the Reverend Charles V. Grahmann, his Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas and Randal Mathis ("Appendix") at 5-8. To date, the Diocese has not turned over to Sharpe any of the documents he recovered from the dumpster. Plaintiff's Complaint at 8.

Sharpe filed suit in this court on March 18, 2002, alleging that the named defendants engaged in conduct which violated 42 U.S.C. §§ 1983 and 1985(2) and (3). On April 4, 2002, the defendants Grahmann, Mathis, and the Diocese filed a motion to dismiss Sharpe's first amended complaint. On April 24, 2002, Sharpe filed, contemporaneously with his response to the defendants' motion to dismiss his first amended complaint, a motion for leave to amend his first amended complaint. On May 29, 2002, the court granted Sharpe's motion for leave to file a second amended complaint and denied as moot the defendants' motion to dismiss the first amended complaint. On July 12, 2002, the defendants Grahmann, Mathis, and the Diocese filed the instant motion to dismiss Sharpe's second amended complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

II. ANALYSIS

A. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction. See *Kokkonen v. Guardian Life Insurance Company of America,*

511 U.S. 375, 377 (1994); *Owen Equipment and Erection Company v. Kroger,* 437 U.S. 365, 374 (1978). A federal court may exercise jurisdiction over cases only as expressly provided by the Constitution and laws of the United States. See U.S. CONST. art. III §§ 1-2; see also *Kokkonen,* 511 U.S. at 377. Federal law gives the federal district courts original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Moreover, a party attempting to invoke federal court jurisdiction bears the burden of establishing that jurisdiction. *Langley v. Jackson State University,* 14 F.3d 1070, 1073 (5th Cir.), *cert. denied,* 513 U.S. 811 (1994).

1. The Legal Standard Under Rule 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure authorizes the dismissal of a case for lack of jurisdiction over the subject matter. See Fed. R. Civ. P. 12(b)(1). A motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction must be considered by the court before any other challenge because "the court must find jurisdiction before determining the validity of a claim." *Moran v. Kingdom of Saudi Arabia,* 27 F.3d 169, 172 (5th Cir. 1994) (internal citation omitted); see also *Ruhrgas AG v. Marathon Oil Company,* 526 U.S. 574, 577 (1999) ("The requirement that jurisdiction be established as a threshold matter . . . is inflexible and without exception") (citation and internal quotation marks omitted). On a Rule 12(b)(1) motion, which "concerns the court's 'very power to hear the case . . . [,] the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.'" *MDPhysicians & Associates, Inc. v. State Board of Insurance,* 957 F.2d 178, 181 (5th Cir.) (quoting *Williamson*

v. Tucker, 645 F.2d 404, 413 (5th Cir.), *cert. denied,* 454 U.S. 897 (1981)), *cert. denied,* 506 U.S. 861 (1992). In ruling on a motion to dismiss under Rule 12(b)(1), the court may rely on: "1) the complaint alone; 2) the complaint supplemented by undisputed facts; or 3) the complaint supplemented by undisputed facts and the court's resolution of disputed facts." *MCG, Inc. v. Great Western Energy Corp.,* 896 F.2d 170, 176 (5th Cir. 1990) (citing *Williamson,* 645 F.2d at 413).[2]

On this motion, the defendants seek dismissal of Sharpe's §§ 1983 and 1985 claims pursuant to Rule 12(b)(1). Specifically, defendants maintain that this court is without jurisdiction to award the relief sought by Sharpe, since awarding such relief would require the court to "review Judge Clayton's state court summary judgment" in violation of the *Rooker-Feldman* abstention doctrine. Defendant's Motion at 5. For the reasons discussed in detail below, the court agrees with the defendants' assertion that the court lacks subject matter jurisdiction under *Rooker-Feldman.*

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[2] While the defendants seek dismissal pursuant to both FED. R. CIV. P. 12(b)(1) and 12(b)(6), the strict standard for consideration of such a motion under *Bell v. Hood,* 327 U.S. 678 (1946), is not triggered since the jurisdictional attack the defendants make under Rule 12(b)(1) does not implicate the merits of Sharpe's federal causes of action. See *Williamson,* 645 F.2d at 415 n.9. The defendants' challenge to this court's jurisdiction over the subject matter of this case is independent of their challenge to the sufficiency of Sharpe's federal causes of action under FED. R. CIV. P. 12(b)(6). *Id.*

2. The *Rooker-Feldman* Doctrine

It is well settled federal law that no court of the United States, other than the United States Supreme Court, can entertain a proceeding to reverse, modify, or otherwise engage in an appellate review of, a state court decision. See *Johnson v. DeGrandy,* 512 U.S. 997, 1005-1006 (1994); *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 287 (1970); *Matter of Reitnauer,* 152 F.3d 341, 343 (5th Cir. 1998); *Brown v. Chastain,* 416 F.2d 1012, 1013-14 (5th Cir. 1969), *cert. denied,* 397 U.S. 951 (1970); see also *Martin v. Hunter's Lessee,* 14 U.S. (1 Wheat.) 304, 351 (1816) (first case recognizing the scope of the Supreme Court's authority to review state court judgments); 28 U.S.C. § 1257 (statute establishing Supreme Court jurisdiction to review the "[f]inal judgments or decrees rendered by the highest court of a State"). It is this jurisdictional rule which forms the basis of the abstention principle first stated in *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 416 (1923), and restated in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983). This principle has become known as the *Rooker-Feldman* doctrine.

Under the *Rooker-Feldman* doctrine, a federal district court lacks jurisdiction to entertain collateral attacks on a state court judgment.[3] *Liedtke v. State Bar of Texas,* 18 F.3d 315, 317 (5th Cir.), *cert. denied,* 513 U.S. 906 (1994). The *Rooker-Feldman* bar is not limited only to those

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[3] The *Rooker-Feldman* doctrine has been described as a "jurisdictional transmutation of *res judicata* doctrine." See, *e.g., Narey v. Dean,* 32 F.2d 1521, 1524 (11th Cir. 1994); see also 18B Charles A. Wright, *et al.,* Federal Practice and Procedure 2d § 4469.1 (2002) at 152.

actions which explicitly seek review of a state court decision, but "it [also] extends to others in which the constitutional claims presented in federal court are inextricably linked with the state court's grant or denial of relief." *Hale v. Harney,* 786 F.2d 688, 691 (5th Cir. 1986) (internal quotation marks and brackets omitted); see also *Johnson,* 512 U.S. at 1005-1006 (under *Rooker-Feldman,* "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a [federal] district court"). The federal plaintiff, however, must have been a party to the state proceedings for the doctrine to apply. *Johnson,* 512 U.S. at 1006. Moreover, the Fifth Circuit has consistently held that *Rooker-Feldman* prohibits a plaintiff from seeking reversal of his state court judgment in federal district court by recasting the complaint in the form of a federal civil rights action. See *Chrissy F. By Medley v. Mississippi Department of Public Welfare,* 995 F.2d 595, 599 (5th Cir. 1993), *cert. denied,* 510 U.S. 1214 (1994); *Hale,* 786 F.2d at 691; *Reed v. Terrell,* 759 F.2d 472, 473 (5th Cir.), *cert. denied,* 474 U.S. 946 (1985); *Hagerty v. Succession of Clement,* 749 F.2d 217, 220 (5th Cir. 1984), *cert. denied,* 474 U.S. 968 (1985); *Sawyer v. Overton,* 595 F.2d 252, 252 (5th Cir. 1979); *Williams v. Tooke,* 108 F.2d 758, 759 (5th Cir.), *cert. denied,* 311 U.S. 655 (1940).

In this case, Sharpe alleges that the defendants conspired to steal documents, which he had previously obtained from the Diocese's dumpster, and later "utilized a state court judge to perpetuate the theft" by obtaining favorable rulings. Plaintiff's Brief in Support of Plaintiff's Response to the Motion to Dismiss Plaintiff's Second Amended Original Complaint of the Roman Catholic Diocese of Dallas, The Reverend Charles V. Grahmann,

His Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas and Randal Mathis ("Plaintiff's Response") at 4. According to Sharpe, these favorable rulings "merely ripened [his] causes of action under 42 U.S.C. § 1983 and § 1985" by providing the state action required under § 1983 and the obstruction of justice and conspiracy elements required by § 1985. *Id.* at 4-9. Sharpe maintains that these federal claims do not constitute a collateral attack of the state court judgment, "but rather [are] premised on the obvious absurdity of the trial court's rulings." *Id.* at 4. Sharpe therefore argues that this court has jurisdiction over his §§ 1983 and 1985 claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. Plaintiff's Complaint at 1. Sharpe seeks relief in the form of compensatory and punitive damages, injunctive relief to prevent the defendants from "destroying or otherwise damaging" the documents, as well as declaratory relief that the actions of defendants in withholding the documents are illegal and unconstitutional and that Sharpe is the "sole and rightful owner" of the documents. *See* Plaintiff's Complaint at 13-14. Sharpe further requests that this court order the Diocese to return to Sharpe any and all of the documents within the Diocese's possession. *Id.* at 14.

"While a losing party in state court proceedings may be able in some instances to sue in federal court to 'mount[ ] a general challenge to the constitutionality' of a statute or rule," *Reed,* 759 F.2d at 473 (citing *Feldman,* 460 U.S. at 483); see also *Musslewhite v. State Bar of Texas,* 32 F.3d 942, 945-46 (5th Cir. 1994), *cert. denied,* 515 U.S. 1103 (1995), no such situation is presented in this case Nor is this a case where the plaintiff has brought a fresh federal claim for adjudication before a United States district court. Rather, Sharpe's federal complaint is nothing

more than a thinly veiled attempt to collaterally attack the validity of a state court judgment to which he was a party. See *Chrissy F.,* 995 F.2d at 599; *Hale,* 786 F.2d at 690-91; *Kimball v. The Florida Bar,* 632 F.2d 1283, 1284 (5th Cir. 1980); *Almon v. Sandlin,* 603 F.2d 503, 506 (5th Cir. 1979).

In Sharpe's state court case, Grahmann, Mathis, the Diocese, and other defendants moved for summary judgment on the ground that Sharpe had no legally recognized interest in the documents and that such documents were therefore the sole property of the Diocese. Summary Judgment Motion at 5-7. The state court granted that summary judgment motion. Summary Judgment Order at 2. Sharpe now seeks to have this court review that judgment by declaring these documents to be *his* sole property and by awarding injunctive relief and damages against the defendants – all in the guise of a civil rights action. As discussed above, however, a plaintiff cannot seek reversal of a state court judgment in federal court by simply recasting his state complaint in the form of a federal civil rights action. Boiled down to essentials, the relief Sharpe seeks in this case, regardless of his artful pleading, is simply a reversal of the summary judgment rendered against him in the state court. See *Reed,* 759 F.2d at 473. It is, therefore, clear to this court that Sharpe's federal complaint is "inextricably intertwined with the state court's denial [of relief]," *Feldman,* 460 U.S. at 482 n.16, and, consequently, this court must dismiss Sharpe's action for want of subject matter jurisdiction.

III. CONCLUSION

For the reasons stated above, the defendants' motion to dismiss plaintiff's second amended complaint pursuant

to Fed. R. Civ. P. 12(b)(1) is **GRANTED**. Accordingly, this court need not consider defendants' alternative challenge to Sharpe's causes of action under Fed. R. Civ. P. 12(b)(6). [4]

SO ORDERED.

September 27, 2002.

/s/ A. Joe Fish
A. JOE FISH
CHIEF JUDGE

[4] Because Sharpe's complaint must be dismissed for want of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), defendant Windle Turley's motion to dismiss under Fed R. Civ. P. 4(m), 12(b)(4), and 12(b)(5) and defendant Monte Fite's *pro se* motion to dismiss under Fed. R. Civ. P. 4(m), 12(b)(4), and 12(b)(5) are denied as moot.

AFFIRMED in part, REVERSED and REMANDED in part; Opinion issued January 24, 2003

[SEAL]

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-02-00573-CV

FRANCIS SHARPE, Appellant

V.

ROMAN CATHOLIC DIOCESE OF DALLAS, and REVEREND CHARLES V. GRAHMANN, His predecessors and Successors as Bishop of the Roman Catholic Diocese of Dallas; RANDALL MATHIS; MUNSCH, HARDT, KOPF, HARR, & DINAN, P.C.; GEORGE W. BRAMBLETT, JR.; HAYNES & BOONE, L.L.P.; and WINDLE TURLEY, Appellees

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On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DV-01-01442-B

OPINION

Before Justices Morris, James, and FitzGerald
Opinion By Justice Morris

This is an appeal from various summary judgments rendered against appellant Francis Sharpe after he filed suit claiming ownership of documents he took out of a trash dumpster used by the Roman Catholic Diocese of Dallas. The trial court rendered judgment in favor of all the defendants sued by Sharpe, namely, the Diocese, Reverend Charles V. Grahmann and his predecessors and successors as Bishop of the Roman Catholic Diocese of

Dallas, Randall Mathis, Munsch Hardt, Kopf, Harr, & Dinan, P.C., George W. Bramblett, Jr., Haynes & Boone, L.L.P., and Windle Turley. In nineteen issues presented on appeal, Sharpe generally contends the trial court erred in granting judgment and dismissing his claims. Because we conclude Sharpe's claims for conversion, conspiracy, and legal malpractice are barred by the two-year statute of limitations, we affirm the trial court's judgment as to those claims. We further conclude, however, that the trial court's summary judgment dismissing Sharpe's claim for fraud against Turley was improper because Turley failed to address the claim in his motion. Accordingly, we reverse and remand that portion of the judgment relating to Sharpe's claim for fraud.

I.

At the center of this case is a dispute over the ownership of documents discarded by the Roman Catholic Diocese of Dallas. Over a period of many months, Francis Sharpe repeatedly searched through a trash dumpster located next to the Diocese offices and removed various items including memoranda and letters. Sharpe testified his intention was to collect evidence and ultimately expose the alleged "vagaries" of the church.

During the time Sharpe was removing trash from the dumpster, the Diocese was involved in a lawsuit styled *John Doe I, et al. v. Reverend Rudolph Kos, et al.*, Windle Turley, counsel for the Doe plaintiffs, testified Sharpe contacted him on several occasions during the course of the *Kos* litigation. According to Turley, Sharpe requested representation in claims against the Diocese and offered to show Turley documents allegedly relevant to the *Kos* suit.

Turley stated he declined to represent Sharpe and refused to meet with him.

In January 1998, a judgment was rendered against the defendants in the *Kos* suit. Soon afterward, Sharpe again contacted Turley about the documents he had collected. Turley was attempting to recover on the *Kos* judgment and purportedly wished to review the documents to determine if they contained any information about the Diocese's assets. Accordingly, Turley took Sharpe's deposition in April, 1998. In attendance at the deposition were Randall Mathis, counsel for the Roman Catholic Diocese of Dallas, and George W. Bramblett of the law firm of Haynes & Boone, L.L.P. Haynes and Boone represented the Diocese in certain post-verdict proceedings. Although Sharpe contends he gave Turley many documents before the deposition, Sharpe produced documents at his deposition in response to Turley's subpoena duces tecum. Sharpe also produced more documents pursuant to the subpoena after his deposition.

The documents Sharpe produced in response to the subpoena were kept by Turley in his offices. On May 21, Mathis sent Turley a letter asking him not to return the documents to Sharpe without first notifying the Diocese so it could have an opportunity to "file whatever proceeding may be appropriate to seek return of the documents to the Diocese rather than their being returned to Mr. Sharpe." The *Kos* litigation settled in July, 1998. After the settlement, in accordance with Mathis's May 21 request, Turley sent Mathis a letter stating he intended to return the documents to Sharpe within a week unless Mathis had objections. Mathis responded the next day stating the Diocese planned to file a motion seeking return of the documents. On July 15, 1998, Turley sent Sharpe a letter

informing him that he was turning the documents over to Mathis. The letter further stated that Turley intended to file a motion with the court asking it to order the documents returned to Sharpe. Turley later sent all the documents to Mathis.

On July 27, 1998, the Diocese filed a motion in the trial court that had rendered judgment in the *Kos* suit asserting that the documents produced by Sharpe during post-judgment discovery were privileged and had been improperly taken. The Diocese requested the trial court to allow it to retain the documents in its possession and to require Sharpe to turn over any other documents he had collected. On July 28, Sharpe filed his own pro se motion in the trial court asking that the documents be returned to him. Sharpe contends he filed the pro se motion because, at that time, he feared that Turley would not file a motion on his behalf as he had stated in the July 15 letter.

Over ten months later, on June 8, 1999, the trial court signed an order granting the Diocese's motion for possession of the documents. In response, Sharpe filed an appeal and a writ of mandamus with this Court asserting the order was void because the trial court lacked jurisdiction. In an opinion issued January 9, 2001, we agreed with Sharpe, in part because Sharpe was not a party to the underlying *Kos* litigation. We concluded the dispute over ownership of the documents "should be resolved by a suit in which Sharpe is made a party." Accordingly, we conditionally granted the writ and directed the trial court to vacate its orders relating to the documents.

Sharpe filed this suit on February 22, 2001 alleging conspiracy, conversion of the documents, and legal malpractice. In addition to Turley, Mathis, and the Diocese,

Sharpe named as defendants Mathis's law firm, Munsch, Hardt, Kopf & Harr, P.C., Reverend Charles V. Grahmann and his predecessors and successors as Bishop of the Roman Catholic Diocese of Dallas, George Bramblett and Bramblett's law firm, Haynes & Boone.[1]

In response to the suit, Turley filed a motion for summary judgment arguing, among other things, that Sharpe's claims were barred by the statute of limitations and Sharpe could not show damages as a matter of law. The Diocese, Reverend Grahmann, Mathis, and Munsch, Hardt, Kopf & Harr, filed a joint motion for summary judgment also raising the statute of limitations defense. After these motions were filed, Sharpe filed both a response and a fourth amended petition adding a claim for fraud against Turley.[2] Although Bramblett and Haynes and Boone filed their joint motion for summary judgment after the fourth petition was filed, their motion did not specifically reference the additional fraud allegation. Furthermore, Turley did not supplement his motion for summary judgment to address Sharpe's new fraud claim.

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[1] Judge Anne Ashby, the trial court judge during the *Kos* litigation, was also a named defendant in this case. Judge Ashby filed a motion for summary judgment based on judicial immunity that was granted by the trial court below. Shape [sic] does not appeal the granting of that motion.

[2] In addition to alleging that Turley's conduct constituted fraud, the fourth amended petition also broadly references "defrauding Sharpe" as an act supporting Sharpe's claims for conspiracy and conversion against the other defendants. The petition does not, however, allege a claim for fraud against any defendant other than Turley. Sharpe contends on appeal that the fourth amended petition also adds a claim for fraudulent misrepresentation. Even a broad reading of the pleading does not support this contention.

On March 15, 2002, the trial court signed three orders granting the motions for summary judgment in favor of all the defendants and ordering that Sharpe take nothing by his claims. The orders did not specify the grounds upon which the motions were granted. The court did, however, send a letter to the parties, separate from the orders, explaining the legal reasoning behind its decision to grant the motions. This appeal ensued.

II.

The claims asserted by Sharpe in this case are of an alleged conspiracy by the defendants to convert the documents he collected from the Diocese's trash and to have Turley betray his obligations to Sharpe as a lawyer. The statutes of limitations governing Sharpe's claims for conspiracy, conversion, and legal malpractice are all two years. *See Stevenson v. Koutzarov,* 795 S.W.2d 313, 318 (Tex. App. – Houston [1st Dist.] 1990, writ denied); TEX. CIV. PRAC. & REM.CODE ANN. § 16.003(a) (Vernon 2002); *Brents v. Haynes & Boone L.L.P.,* 53 S.W.3d 911, 914 (Tex. App. – Dallas 2001, pet. denied). The defendants moved for summary judgment on the ground that Sharpe failed to file his claims within two years after they accrued.

When a defendant moves for summary judgment based on the affirmative defense of the statute of limitations, he assumes the burden of showing as a matter of law that the suit is barred by limitations. *See Rogers v. Ricane Enters., Inc.,* 772 S.W.2d 76, 80-81 (Tex. 1989). The limitations period begins to run when the cause of action accrues, and the date of accrual is a question of law. *See Moreno v. Sterling Drug, Inc.,* 787 S.W.2d 348, 351 (Tex. 1990). A cause of action accrues when facts come into

existence authorizing a claimant to seek a judicial remedy and the aggrieved party knows or should know of the existence of these facts. *See Sullivan v. Bickel & Brewer,* 943 S.W.2d 477, 481 (Tex. App. – Dallas 1995, writ denied).

The factual basis for Sharpe's claims is that following his production of documents pursuant to the subpoena issued by Turley, Turley gave the documents to the Diocese and the Diocese refused to return the documents to Sharpe despite his claims of ownership. The defendant's summary judgment evidence includes a letter sent by Turley to Sharpe on July 15, 1998, telling Sharpe that he was turning the documents over to the Diocese but that he would a [sic] file a motion seeking their return to Sharpe. The summary judgment record also contains a motion filed by the Diocese on July 27, 1998, asserting ownership of the documents. When Turley failed to file a motion on Sharpe's behalf, Sharpe filed a pro se motion on July 28, 1998, asserting his rights to the documents and demanding they be returned to him. This evidence shows, as a matter of law, that all facts necessary to form the basis of Sharpe's claims, and Sharpe's knowledge of those facts, arose no later than July 28, 1998. Because Sharpe did not file this suit until February 22, 2001, Sharpe failed to bring his claims for conspiracy, conversion, and legal malpractice within the two year limitations period.

Sharpe first attempts to avoid the limitations bar by contending the trial court's letter explaining the reasons why he granted the motions did not state that the limitations ground was a basis for the judgment. The summary judgment orders do not specify, however, what grounds were relied upon for the judgment. When a summary judgment order does not specify the grounds upon which the motion was granted, the reviewing court will affirm

the judgment if any of the grounds advanced in the motion is meritorious. *See Nat'l Cas. Co. v. Lane Exp., Inc.,* 998 S.W.2d 256, 259 (Tex. App. – Dallas 1999, pet. denied). A letter from the trial court cannot be considered on appeal for providing the reasons for a judgment. *Id.* Sharpe's first argument, therefore, is meritless.

Next, Sharpe suggests his claims did not arise until November 21, 2001, when he sent a formal demand letter to the defendants for return of the documents. When the party accused of illegally converting property originally had lawful possession, the cause of action for conversion does not arise, and the limitations period does not begin to run, until return of the property has been demanded and refused, or the party in possession has unequivocally exercised acts of dominion over the property inconsistent with the claims of the owner or the person entitled to possession. *See Taylor v. Walston & Co., Inc.* 502 S.W.2d 613, 615 (Tex. Civ.App. – Dallas 1973, writ ref'd n.r.e.). Although Turley originally had legal possession of the documents because of the subpoena issued to Sharpe, both he and the Diocese clearly exercised acts of dominion over the property inconsistent with Sharpe's claims of ownership when Turley turned the documents over to the Diocese and the Diocese filed a motion claiming rightful ownership. Sharpe's letter of November 21, 2001 was nothing more than an additional demand in the continuing dispute over ownership and did not restart the limitations period.

Sharpe also attempts to invoke the *Hughes* tolling rule to extend the date upon which his claims accrued. Under *Hughes,* when an attorney commits malpractice in the prosecution or defense of a claim that results in litigation, the statute of limitations is tolled until all

appeals on the underlying claim are exhausted or the litigation is otherwise finally concluded. *Hughes v. Mahaney & Higgins,* 821 S.W.2d 154, 157 (Tex. 1991). Sharpe seeks to invoke the rule to toll his limitations period until this Court ruled on his writ of mandamus on January 9, 2001. Contrary, to Sharpe's assertions, his case does not fall under the category of cases covered by the *Hughes* tolling rule.

In this case, there was no underlying litigation out of which Sharpe's claims arose. Sharpe was not a party to the *Kos* litigation and his claims do not arise from any malpractice relating to the prosecution or defense of the claims involved in that case. To the extent Sharpe may have become involved in the *Kos* suit as a result of the post-judgment motions filed in that case, his involvement did not arise until after his causes of action against the defendants accrued.

In addition, the dispute at issue in the motions filed in the *Kos* action was substantially the same dispute being litigated here. The pendency of the motions in the trial court, and their later appeal to this Court, did not toll the statute of limitations on Sharpe's claims because, as Sharpe argued in his writ of mandamus, the *Kos* court had no jurisdiction to decide the issue of ownership of the documents. The orders on the motions were vacated and the dispute over the documents dismissed. Because there was no earlier or underlying case involving Sharpe's claims that was prosecuted to judgment, the statute of limitations on his suit was not tolled. *See id; see also, Cronen v. City of Pasadena,* 835 S.W.2d 206, 210 (Tex. App. – Houston [1st Dist.] 1992, no writ) (When a case is dismissed without being prosecuted to judgment, limitations runs from the time the cause of action accrued to the

time of refiling), *disapproved on other grounds by Lewis v. Blake,* 876 S.W.2d 314 (Tex. 1994).

Finally, Sharpe generally contends that the statute of limitations does not bar his claims because his affidavit and various deposition excerpts he submitted as summary judgment evidence establish "estoppel, waiver, abandonment, fraud, and fraudulent concealment." Sharpe provides no argument, analysis, or authority, however, to support this contention. Absent any supporting argument or citation, we decline to address these issues on the merits. *See Bowles v. Clipp,* 920 S.W.2d 752, 761 (Tex. App. – Dallas 1996, writ denied). We conclude Sharpe's claims for conspiracy, conversion, and legal malpractice are barred by limitations.

The final claim remaining in Sharpe's suit is his claim for fraud against Turley. As stated above, the fraud claim was added by Sharpe in his fourth amended petition after Turley filed his motion for summary judgment. Turley neither amended nor supplemented his motion to address the newly added claim. On appeal, Turley contends he was entitled to judgment on the added claim because the grounds stated in his motion were broad enough to negate Sharpe's right to recover for fraud. Although generally a summary judgment cannot be granted on a claim not addressed in the motion, summary judgment may be granted on later pled causes of action if the grounds asserted in the motion show that the plaintiff could not recover from the defendant on the later pled cause. *See Wilson v. Korthauer,* 21 S.W.3d 573, 579 (Tex. App. – Houston [14th Dist.] 2000, pet. denied). In this case, however, we conclude Turley's motion was not broad enough to encompass Sharpe's fraud claim.

To establish a right to summary judgment, a defendant must either negate at least one element of the plaintiff's theory of recovery or plead and conclusively prove each element of an affirmative defense. *See Walker v. Harris,* 924 S.W.2d 375, 377 (Tex. 1996). The affirmative defense of the two-year limitations period urged by Turley in his motion does not defeat Sharpe's fraud claim because fraud is subject to a four-year limitations period. *See* Tex. Civ. Prac. & Rem.Code Ann. § 16.004(a) (Vernon 2002). Therefore, Turley's motion necessarily had to negate an element of the fraud claim itself.

The elements of a cause of action for fraud are a material misrepresentation, which was false, and which was either known to be false when made or asserted without knowledge of its truth. *See Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.,* 960 S.W.2d 41, 47 (Tex. 1998). In addition the defendant must have intended the misrepresentation to be acted upon, the plaintiff must have relied upon it, and there must be a resulting injury. *Id.* Along with the limitations ground, the grounds for summary judgment urged by Turley in his motion were Sharpe's lack of (1) an attorney-client relationship with Turley; (2) legal ownership of the documents in question, and (3) damages. These grounds do not negate any of the liability elements of Sharpe's fraud claim. The only element the motion could arguably be said to address is that of damages.

The two measures of damages for common-law fraud are the "out-of-pocket" measure and the "benefit-of-the-bargain" measure. *Id.* at 49. Turley contended in his motion that Sharpe could not show he was damaged because he had no legal right to possession of the documents and the documents had a no market value. These

arguments do not directly address the measures of damages for fraud. Furthermore, Sharpe's fourth amended petition generally alleges he suffered compensatory damages in addition to the loss of the documents. Because Sharpe was not given an opportunity to respond to Turley's summary judgment motion in the context of defending his fraud claim, we cannot know whether the loss of the documents is the only injury he contends he suffered as a result of Turley's alleged fraud.

Although we express no opinion on the merits of Sharpe's claim for fraud, we conclude the trial court improperly granted summary judgment on the claim because it was not addressed in the motion. *See Farah v. Mafrige & Kormanik, P.C.*, 927 S.W.2d 663, 673 (Tex. App. – Houston [1st Dist.] 1996, no writ). Because of our resolution of the above issues, it is unnecessary for us to address the other issues presented by Sharpe in this appeal.

We reverse the trial court's summary judgment with respect to its dismissal of the fraud claim asserted against Windle Turley. We affirm the trial court's judgment in all other respects.

/s/ Joseph B. Morris
JOSEPH B. MORRIS
JUSTICE

(SEAL)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

FRANCIS SHARPE, Appellant

No. 05-02-00573-CV v.

ROMAN CATHOLIC DIOCESE OF DALLAS and REVEREND CHARLES GRAHMANN, His Predecessors and Successors as Bishop of the Roman Catholic Diocese of Dallas, RANDAL MATHIS, MUNSCH, HARDT, KOPF, HARR, & DINAN, P.C., GEORGE W. BRAMBLETT, JR., HAYNES & BOONE, L.L.P., A, Appellees

Appeal from the 44th Judicial District Court of Dallas County, Texas. (Tr.Ct.No. 01-01442-B). Opinion delivered by Justice Morris, Justices James and FitzGerald participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED IN PART** and **REVERSED AND REMANDED IN PART**. We **REVERSE** the portion of the trial court's judgment dismissing Francis Sharpe's claim for fraud against Windle Turley and remand that claim to the trial court for further proceedings. We **AFFIRM** the trial court's judgment in all other respects. It is **ORDERED** that all parties bear their own costs on appeal.

Judgment entered January 24, 2003.

/s/ Joseph B. Morris
JOSEPH B. MORRIS
JUSTICE

Opinion Filed January 9, 2001

[SEAL]

IN THE
Court of Appeals
Fifth District of Texas at Dallas

No. 05-99-01614-CV

FRANK SHARPE, Appellant

V.

ROMAN CATHOLIC DIOCESE OF DALLAS, Appellee

On Appeal from the 134th Judicial District Court
Dallas County, Texas Trial Court
Cause No. 93-05258-G

OPINION

Before Justices Wright, Roach, and O'Neill
Opinion By Justice O'Neill

This is a consolidated appeal and petition for writ of mandamus complaining of the trial court's order granting appellee the Roman Catholic Diocese of Dallas's (the Diocese) motion for return of documents. The sole issue presented is whether the trial court had jurisdiction to order documents that a nonparty to litigation produced in discovery turned over to the Diocese. Appellant Frank Sharpe's sole complaint is that the trial court lacked jurisdiction because its plenary jurisdiction had expired when it entered its order. For the reasons that follow, we

conditionally grant the writ of mandamus. We dismiss the appeal as moot.

This appeal arises out of a lawsuit filed by several plaintiffs against the Diocese. On January 29, 1998, a final judgment was entered against the Diocese. The Diocese appealed. While the appeal was pending, the plaintiffs conducted post-judgment discovery. In particular, plaintiffs served a subpoena and notice of deposition duces tecum on Frank Sharpe. In response, Sharpe produced various documents to the plaintiffs. The documents consisted of papers that Sharpe had recovered from a trash dumpster on Diocese property. The record shows that Sharpe did not merely produce the documents and allow plaintiffs to inspect them; he allowed plaintiffs to retain the original documents. On July 15, 1998, the plaintiffs sent Sharpe a letter informing him that they were turning the documents over to the Diocese. On July 27, 1998, the Diocese filed a motion in the trial court asserting the documents were privileged and had been "improperly taken" by Sharpe. The Diocese requested the trial court to allow it to retain the documents in its possession and to also require Sharpe to return any other Diocese documents he may have in his possession.

On the same date the Diocese filed the motion in the trial court, the Diocese and plaintiffs filed a joint motion in this Court informing us that they had reached a settlement agreement and requesting that we set aside the trial court's judgment. On August 20, 1998, this Court granted the motion, set aside the trial court's judgment and remanded to the trial court to enter orders pursuant to the parties' settlement agreement. Our mandate issued on July 22, 1998 and, on February 18, 1999, pursuant to the

parties' settlement agreement, the trial court dismissed the plaintiffs' claims with prejudice.

Thereafter, on April 5, 1999, Sharpe filed a response to the Diocese's motion for return of the documents asserting the trial court's plenary jurisdiction expired thirty days after signing the dismissal order and thus the trial court lacked jurisdiction to determine ownership of the documents. Sharpe further asserted that the trial court's jurisdiction over post-judgment discovery matters did not include the determination of the ownership of original documents that had been produced in discovery. Sharpe reasoned that the discovery rules only allow the parties to litigation to inspect and make copies of documents that are produced, and determination of the ownership of originals is beyond the scope of discovery.

On April 9, 1999, outside its plenary jurisdiction, the trial court signed an order appointing a special master and requiring the master to take custody of "Court Reporter's exhibits 1 through 48 admitted in the hearing on date 5/5 & 5/6."[1] On June 8, 1999, the trial court granted the Diocese's motion for return of documents and protection and ordered the special master to deliver the documents in its possession to the Diocese. Sharpe filed a writ of mandamus and an appeal from the June 8, 1999 order. In both proceedings, appellant asserts the June 8, 1999 order was void because the trial court lacked jurisdiction.

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[1] Although the order indicated a hearing was held on May 5 and May 6, and did not indicate a year, the order was signed in response to motions filed in July 1998 and was signed on April 9, 1999, suggesting the date in the order is either erroneous or was added after the trial court signed the order.

Writ Of Mandamus

Mandamus relief is generally available only if the court clearly abused its discretion and the party has no adequate remedy by appeal. *See In re Southwestern Bell Telephone Co.,* 43 Tex. Sup. Ct. J. 1005, 1006-1007, 2000 WL 854253 (Tex. June 29, 2000) (per curiam); *In re Long,* 984 S.W.2d 623, 625 (Tex. 1999) (per curiam). Mandamus is proper if a trial court issues an order beyond its plenary jurisdiction. *See Southwestern Bell Telephone Co.,* 43 Tex. Sup. Ct. J. at 1007; *In re Dickason,* 987 S.W.2d 570, 571 (Tex. 1998) (per curiam). When attacking a void order by mandamus, it is not necessary to show no adequate remedy at law exists. *Southwestern Bell Telephone,* 43 Tex. Sup. Ct. J. at 1007.

Jurisdiction

A trial court's jurisdiction is the court's judicial power expressly authorized by the constitution or statutes. *Eichelberger v. Eichelberger,* 582 S.W.2d 395, 398 (Tex. 1979). A trial court's jurisdiction must be legally invoked or its power to act does not exist. *Hjalmarson v. Langley,* 840 S.W.2d 153, 155 (Tex. App. – Waco 1992, orig. proceeding.) A trial court's jurisdiction is invoked by the filing of a petition. *See Ex parte Fleming,* 532 S.W.2d 122, 123 (Tex. Civ. App. – Dallas 1975, orig. proceeding); *Moreno v. Moore,* 897 S.W.2d 439, 442 (Tex. App. – Corpus Christi 1995, no writ). A judgment unsupported by a petition is void. *Douthit v. Anderson,* 521 S.W.2d 127, 129 (Tex. Civ. App. – Dallas 1975, no writ). Furthermore, a trial court's plenary jurisdiction expires thirty days after a final judgment is entered if no motion extending the trial court's plenary jurisdiction is timely filed. *See Scott & White Memorial Hosp. v. Schexnider,* 940 S.W.2d 594, 596 (Tex. 1996).

APPLICATION

The trial court's jurisdiction in this case was initially invoked by the plaintiffs filing a petition in the underlying litigation. Those claims were ultimately dismissed with prejudice on February 19, 1999. No post-judgment motions were filed that would extend the trial court's plenary jurisdiction; thus the trial court's plenary jurisdiction expired thirty days after the dismissal. Nevertheless, after the trial court lost plenary jurisdiction, it held a hearing on the motion for return of the documents, appointed a Special Master to take possession of the documents, granted the Diocese's motion and ordered the documents returned to the Diocese. The question presented is whether the trial court had jurisdiction to perform these acts. The Diocese relies on two bases for the proposition that the trial court had jurisdiction notwithstanding its lack of plenary jurisdiction: (1) rule 621a of the rules of civil procedure and (2) its general "inherent" authority to act as a court.

The Diocese first asserts the trial court had jurisdiction under rule 621a of the rules of civil procedure to order the documents returned to the Diocese because the dispute arose out of post-judgment discovery. Every court having jurisdiction to render a judgment has the inherent power to enforce its judgments. *Arndt v. Farris,* 633 S.W.2d 497, 499 (Tex. 1982). In this regard, rule 621a is an aid to the enforcement of the court's judgment and gives the trial court continuing jurisdiction over post-judgment discovery to aid in the enforcement of the judgment. *See id;* TEX. R. CIV. P. 621a. The trial court also has jurisdiction over matters incidental to post-judgment discovery. *Cf. Metzger v. Casseb,* 839 S.W.2d 160, 161 (Tex. App. – Houston [1st Dist. 1992, orig. proceeding). The trial court does

not, however, have continuing jurisdiction over matters that do not relate to the trial court's enforcement of its judgment. *See Allen v. Allen,* 717 S.W.2d 311, 312 (Tex. 1986) (per curiam); *Jobe v. Lapidus,* 874 S.W.2d 764, 767 (Tex. App. – Dallas 1994, writ denied).

Under the facts of this case, we conclude rule 621a did not give the trial court jurisdiction to determine ownership of the documents. The documents were produced in post-judgment discovery at a time the parties were seeking to enforce the trial court's January 28, 1998 judgment. However, that judgment was subsequently set aside at the parties request and the cause was remanded to the trial court. At that time, the trial court's rule 621a jurisdiction necessarily ceased. Furthermore, before litigating the dispute surrounding ownership of the documents, the trial court dismissed the cause with prejudice leaving no judgment to enforce. Thus, the parties could no longer engage in discovery to enforce the prior judgment.

Additionally, plaintiffs did not obtain custody of the originals pursuant to the rules of discovery. Rather, the rules would only have allowed plaintiffs to inspect and copy the originals. *See* TEX. R. CIV. P. 205. Thus, while plaintiffs' access to the documents may have been a part of proper post-judgment discovery, Sharp's gratuitous action in allowing plaintiffs to retain the originals did not make litigation of the ownership of the documents a discovery dispute. Finally, the trial court's complained-of actions did not settle a discovery dispute between litigants, but rather a property dispute between a litigant and a nonparty. Rule 621 cannot be used to independently join additional claims or parties. *See Butler v. Stonewall Bank,* 569 S.W.2d 542, 544 (Tex. Civ. App. – Corpus Christi 1978, no writ). We conclude the trial court's actions were not incidental to

post-judgment discovery or otherwise performed to aid in the enforcement of its judgment. Therefore, the trial court did not have jurisdiction under rule 621a.

The Diocese also generally asserts the trial court had the "inherent authority" to determine ownership of the documents because the documents were in the trial court's "constructive possession." In addition to the express grants of judicial power to each court, the trial courts possess certain "inherent powers" which are "woven into the fabric of the constitution." *See Eichelberger,* 582 S.W.2d at 389. "The [i]nherent judicial power of a court is not derived from legislative grant or *specific* constitutional provision, but from the very fact that the court has been created and charged by the constitution with certain duties and responsibility." *Id.* (emphasis added.) The inherent powers of a court are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity. *See Eichelberger,* 582 S.W.2d at 398. The power exists to enable our courts to effectively perform their judicial functions and to protect their dignity, independence and integrity. *Id.* at 398-99. Inherent power is not, however, a substitute for plenary jurisdiction. *See Lane Bank Equipment Co. v. Smith Southern Equipment,* 10 S.W.3d 308, 311 (Tex. 2000) (citing *Hjalmarson,* 840 S.W.2d at 155). Nor does a court's inherent judicial power confer jurisdiction where none pre-exists by statutory or constitutional grant. *See Hjalmarson,* 840 S.W.2d at 155. Moreover, "inherent" judicial powers do not include the authority to make substantive rulings on controversies between parties in the absence of pleadings invoking the court's jurisdiction. *See In re Polybutylene Plumbing Litigation,* 23 S.W.3d 428, 438 (Tex. App. – Houston [1st Dist.] 2000, no pet.).

None of the rationale supporting inherent judicial authority would be furthered by allowing a trial court to litigate ownership of documents a third party produced in discovery in the absence of pleadings to support such a determination. Specifically, it was not necessary for the trial court to determine ownership of the documents to protect its judicial function, independence, or integrity. *Cf. Continental Carbon Co. v. Sea-Land Serv., Inc.*, 27 S.W.3d 184, 189 (Tex. App. – Dallas 2000, pet. denied). Rather, the dispute should be resolved by a suit in which Sharpe is made a party.

We conclude the trial court's actions after it lost plenary jurisdiction were null and void. We conditionally grant the writ of mandamus, and direct the trial court to vacate its April 9, 1999 and June 8, 1999 orders and to direct the special master to return the documents to the party who had possession of the documents before the trial court's void actions.[2] The writ will issue only if the trial court fails to comply.

Because we conditionally grant the writ of mandamus, we need not determine whether Sharpe, a nonparty to the litigation, may appeal the trial court's order. We dismiss the appeal as moot.

/s/ Michael J. O'Neill
MICHAEL J. O'NEILL
JUSTICE

Do Not Publish
TEX. R. APP. P. 47

[2] We express no opinion on who is the rightful owner of the documents.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FRANCIS SHARPE, *Plaintiff,*	§	
v.	§	**CIVIL ACTION NO: 3-02CV 0552-G**
ROMAN CATHOLIC DIOCESE OF DALLAS, REVEREND CHARLES V. GRAHMANN, His Predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas; WINDLE TURLEY, RANDAL MATHIS and MONTE FITE, *Defendants.*	§	

PLAINTIFF'S SECOND
AMENDED ORIGINAL COMPLAINT

(Filed May 29, 2002)

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, Francis Sharpe, Plaintiff, complaining of Defendants, the Roman Catholic Diocese of Dallas, Reverend Charles Grahmann, his predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas, Windle Turley, Randal Mathis and Monte Fite, and for cause of action would respectfully show:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. §1983, 42 U.S.C. §1985 subsections (2) and (3) and the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction exists by 42 U.S.C. §1343(1). Also, federal question jurisdiction is conferred on this honorable Court by 42 U.S.C. §1331 because this action arises under the Constitution of the United States of America. Venue is proper in this Division because the events which are the subject of this cause of action occurred in Dallas, Texas which is located in the Dallas Division of the Northern District of Texas.

PARTIES

2. Plaintiff, Francis Sharpe ("Sharpe"), at all times relevant hereto is a United States citizen and a resident of the State of Texas in the Northern District of Texas.

3. Defendant, the Roman Catholic Diocese of Dallas ("the Diocese"), is an unincorporated religious association located with in [sic] the boundaries of the Northern District of Texas. The Roman Catholic Diocese has appeared herein.

4. Defendant, Reverend Charles Grahmann, his predecessors and Successors, as Bishop of the Roman Catholic Diocese of Dallas ("Grahmann"), is an individual and at all times relevant hereto was and remains a United States citizen and a resident of the State of Texas in the Northern District of Texas. Grahmann has appeared herein.

5. Defendant, Windle Turley ("Turley"), is an individual and at all times relevant hereto was and remains a United States citizen and a resident of the State of Texas

in the Northern District of Texas. Turley is an attorney and at all times relevant to this case has been practicing law in Dallas, Texas. Windle Turley may be served with process at his place of business to wit: Law Office of Windle Turley, P.C., 1000 Turley Law Center, 6440 North Central Expressway, Dallas, Texas 75206.

6. Defendant, Randal Mathis ("Mathis") is an individual and at all times relevant hereto was and remains a United States citizen and a resident of the State of Texas in the Northern District of Texas. Mathis is an attorney and at all times relevant to this case has been practicing law in Dallas, Texas. Randal Mathis has appeared herein.

7. Defendant, Monte Fite ("Fite"), is an individual and at all times relevant hereto was and remains a United States citizen and a resident of the State of Texas in the Northern District of Texas. Fite was an agent of Defendant Windle Turley at all times relevant to this case. Monte Fite may be served with process at his place of business to wit: Law Office of Windle Turley, P.C., 1000 Turley Law Center, 6440 North Central Expressway, Dallas, Texas 75206.

FACTUAL BACKGROUND

8. In July 1997, Sharpe (a Catholic who was openly critical of the Diocese and, therefore, not a "good" Catholic) began retrieving items (documents, notes, memos, etc.) from the dumpster located adjacent to the Diocese. Sharpe continued to retrieve items from the dumpster and items from bags which had fallen out of the dumpster until on or around the end of December, 1998. Sharpe retrieved these items with no complaint from the Diocese. The dumpster was not enclosed by a fence or other structure as required

by the City of Dallas, nor was the dumpster posted with a "No Trespassing" sign. The Diocese never advised Sharpe that he could not retrieve items that the Diocese had clearly thrown away in the dumpster. When the Diocese learned Sharpe was retrieving items from the dumpster, and told him not to do it any longer, Sharpe never went back to the dumpster. During this same period of time, other people were also rummaging through the dumpster without complaint from the Diocese.

9. After accumulating the evidence from in and around the dumpster (the refuse would often be contained in plastic bags, sometimes opaque and sometimes clear, and on some occasions was contained within open cardboard boxes), Sharpe would take the refuse home, separate it, and organize it. Sharpe found that many of the items he had retrieved from the Diocese dumpster were clearly damaging to the Diocese with respect to then ongoing litigation involving the Diocese, Rudy Kos and the *John Doe* plaintiffs, to wit: the paperwork the Diocese was throwing away was evidence relevant to the *Kos* case, and therefore, the Diocese was destroying evidence. The documents reflected other acts of pedophilia and child abuse by Catholic Priests, knowledge of pedophilia by the Diocese and efforts by the Diocese to influence the Texas State judicial system during and after the *Kos* trial. Sharpe segregated and separated the items, ultimately cataloging them and organizing them in his own fashion so as to be able to expose the vagaries (unlawful/illegal conduct) of the Diocese.

10. After the verdict in the *Kos* trial, but prior to entry of judgment, the Diocese filed a motion to recuse Judge Ann Ashby from further involvement in the *Kos* case. After the motion to recuse Judge Ashby was filed, but

prior to the hearing on the motion, Sharpe identified a document taken from the dumpster which later became known as the "Tower Club memo." Prior to the hearing on the motion to recuse Judge Ashby, Sharpe provided to the plaintiffs' attorneys in the *Kos* case a copy of the Tower Club memo. The Tower Club memo is, in reality, minutes of a meeting/advisory group to Bishop Grahmann dated August 11, 1997 which evidences potential ethical violations by lawyers and illegal ex-parte influence on the Texas State judiciary by the Diocese. Sharpe continued to provide documents to the plaintiffs' attorneys in the *Kos* case following the disclosure of the Tower Club memo. Defendant Turley was one of the attorney's representing the plaintiffs in the *Kos* case. Beginning early in 1997, Turley used an intermediary, Monte Fite, and attorneys who worked for Turley to communicate with Sharpe. Fite identified himself to Sharpe as a "go between" for Turley. Sharpe was told by Fite not to contact Turley directly, but to contact Fite through Turley's law office. Fite would come to Sharpe's residence, many times with lawyers from Turley's office, to review the evidence Sharpe possessed regarding the Diocese's knowledge of pedophilia by members of the Diocese, child abuse, destruction of evidence of assets, telephone messages between a Texas State Judge and the Diocese, and the ability of the Diocese to satisfy the approximate 126 million dollar verdict and judgment in the *Kos* case. Sharpe provided some of the information to Fite which Fite told Sharpe he would then provide to Turley. Sharpe had retained a lawyer to assist him with his situation and problems with the Diocese's conduct. The lawyer was the Hon. Joseph Ashmore.

11. Fite, in and around March 1998, prepared a letter for Sharpe to send to Joseph Ashmore (Sharpe's

lawyer) which terminated Sharpe's relationship with Ashmore. After Ashmore's representation of Sharpe was terminated, Fite and others proportedly on behalf of Turley "prepared" Sharpe for the upcoming deposition in preparing Sharpe for the deposition Fite and the other yet unnamed co-conspirators advised Sharpe if asked how he got the documents from the dumpster to respond that it was a "simple trespass", full well knowing no trespass had occurred because the dumpster was not posted "No Trespassing" nor had anyone advised Sharpe that he could not retrieve items from in and around the dumpster. Turley, thereafter, subpoenaed Sharpe to produce documents at a deposition on or about April 30, 1998 for use in the *Kos* litigation. Sharpe provided documents, which he retrieved from the dumpster and other places, which reflected the illegal evidence destruction by the Diocese, evidence of other acts of pedophilia by other Diocesan Priests, possible aggravated perjury and sexual perversion which existed within the Diocese. Sharpe appeared at Turley's office and provided documents to Turley that Sharpe had retrieved from the Diocese dumpster and other places. In the deposition stipulations and on the record, during the deposition of Sharpe, Turley represented to Sharpe, with Randal Mathis present (then attorney for the Diocese), that Sharpe would always have access to the records and that copies would be made and the originals returned to Sharpe. Turley also maintained to Mathis that the documents were clearly Sharpe's, that the Diocese had abandoned any ownership right and that Mathis and the Diocese were out of luck.

12. The items were not returned as promised to Sharpe by Turley and all of the lawyers present at Sharpe's deposition, including Randal Mathis, Dennis

Sullivan and George Bramblett. Thereafter, Turley, the Diocese, and others settled the *Kos* litigation on or around July 11, 1998.

13. After learning about the *Kos* settlement from the news media (*The Dallas Morning News*), Sharpe then received a letter on or about July 16, 1998, from the Law Offices of Windle Turley, stating "we are turning over the documents *you* brought to us to Mr. Mathis. *We* will be filing a motion with the court to request that these documents be returned to you, but until the time of that hearing and subsequent ruling, Mr. Mathis will have possession of these documents."

14. The Defendants combined and conspired to dispossess Sharpe of his property. The documents were given to Mathis by Turley, although Turley had not obtained permission from Sharpe to do anything other than copy the documents and return them to Sharpe. Despite Turley's representation that he would move the court for the return of Sharpe's documents, Turley never filed such a motion. Instead, Sharpe filed a *pro se* motion for return of the documents, which the Diocese fought. Ultimately, in and around April 1999, long after any case or controversy amongst the parties to the litigation had been resolved, Judge Ashby ordered the documents placed in receivership with an attorney named Paul Lockey. Lockey then rented a storage unit located at the Lock & Key Storage facility on Buckner Blvd. in Dallas, Dallas County, Texas. When Mr. Lockey rented the unit, he obtained three (3) keys. To date, it is unknown why Mr. Lockey obtained so many keys. However, it is known that Randal Mathis was another contact with potential ability to access the documents. Moreover, Sharpe was not provided with a key to

the storage unit. The documents had been deposited with Lockey supposedly for safekeeping.

15. Ultimately, Sharpe appealed the trial court's order and, the Dallas Court of Appeals, in a opinion dated January 9, 2001, ordered that the documents be returned to the person last in possession of the documents concluding that the trial court lacked jurisdiction to order the documents be sent to Lockey. On February 7, 2001, Judge Ashby vacated her prior order and complied with the mandate from the Court of Appeals. The Dallas Court of Appeals stated in its opinion that the Diocese and Sharpe should be parties to a lawsuit to determine ownership even though the Diocese had thrown the documents away, had abandoned the property and all of their lawyers agreed prior to the deposition of Sharpe to return the documents to Sharpe. As suggested by the Court of Appeals, Sharpe sued the Diocese and the lawyers for conspiracy, conversion, fraud and other state law claims to regain the documents Sharpe took from the dumpster. On November 21, 2001, written demand was made on the Diocese and the other Defendants for the return of the items. The Diocese and other Defendants, nevertheless, refused to comply with the agreement made at the deposition. To date, the documents have not been returned to Sharpe.

16. As described above, the combined efforts of the Defendants, have deprived Sharpe of his property and dispossessed him of 48 boxes and some large plastic bags of incriminating evidence that he had gathered against the Diocese over a long period of time. This property has value in that it could be used by Sharpe to author a book, write a series of articles or make a documentary regarding the Diocese and those involved in the legal machinations in

the *Kos* case. This property has value to the Plaintiff as it provides proof of the truth of the subject matter of any such book, article or documentary and protects him from meritless allegations of slander. Also, as Sharpe disclosed in the deposition, he intended to take the evidence to Federal Investigators to use to potentially prosecute the Diocese and their employees.

17. The documents which are the subject of this case are currently in possession of Frank Andrews who was appointed *sua sponte* by Judge Joe D. Clayton to take possession of Sharpe's property. Most recently, Mr. Lockey turned over one of the keys to the Honorable Frank Andrews, Special Master appointed by the Honorable Joe D. Clayton, to "segregate" the documents. Despite having discarded the documents, the Diocese maintains its position with Judge Clayton that the documents are "private". That is the extent of the objection voiced by the Diocese in Sharpe's State law conversion claim. Sharpe has, by efforts of the Defendants, been denied access to the documents since April, 1998. The Diocese maintains they 'have" the documents and will not return them and they are private although they made no effort to steal them from Turley who had them from April 1998 until July 15, 1998. Moreover, the Diocese did not seek any judicial relief until Judge Ashby's jurisdiction expired. Also, the Diocese did not seek relief with the trial court in the Kos case until they had possession of Sharpe's documents for 6 months or more. This constitutes an abuse by the Defendants of the State judicial system in violation of 42 U.S.C. §§1983 & 1985(2) and (3). Moreover, the Defendants have engaged in ex parte communication with Judge Joe D. Clayton in the state court proceeding initiated by Sharpe, utilized Judge Ashby to steal the documents when she clearly had no

jurisdiction over Sharpe or any case or controversy, prevailed upon Judge Clayton to prohibit most any sort of discovery, prevented Sharpe from copying the documents with the approval of Judge Clayton, ignored all of the representations previously made to Sharpe at the deposition, with the approval of Judge Clayton, and have prevailed upon Judge Clayton to rule that the documents were not "legally abandoned" (even though clearly thrown away by the Diocese in a non-secured dumpster open to the general public), and prevailed upon Judge Clayton to extinguish all of Sharpe's causes of action in state court even though Judge Clayton gave Sharpe no opportunity to be heard or conduct discovery to prove the impropriety of the Defendant's position. It is beyond dispute that all of this occurred with Judge's Clayton's active and/or passive participation.

18. The documents in question are original documents obtained by Sharpe from the Diocese dumpster which were clearly thrown away. Sharpe did not make and does not have copies of all of these documents. By this suit, Sharpe seeks in part the return of what is left of the documents. Based on the facts and applicable law, Sharpe has a substantial likelihood of success on the merits of his claims. Because of the sensitive nature of the contents of the documents, there is a substantial threat that, absent an injunction, the documents will be further affected by the efforts of the Defendants. Particularly since all of the original keys to the storage unit originally rented by Mr. Lockey have not been accounted for. Sharpe will suffer irreparable harm, damage and injury unless the Defendants are enjoined from destroying or otherwise damaging in any manner the documents in question or otherwise cause the documents to be illegible to Sharpe because

damage, destruction or illegibility of the documents would prevent their intact return to Sharpe and prevent their use by Sharpe as supporting proof for a potential book, article, documentary or criminal prosecution. This would consequently destroy the value of the documents to Sharpe and prevent Sharpe from exercising his constitutional rights to freedom of speech and freedom from being deprived of his property without due process of law and reporting of perceived criminal acts. The value to Sharpe is both emotional and monetary; however, because of the nature of the subject matter of the documents and the varying media by which Sharpe may elect to publish the documents, the monetary value is especially speculative and difficult to ascertain. Therefore, Sharpe has no adequate remedy at law or otherwise in the event that the documents are altered in any manner or otherwise caused to be illegible.

19. Sharpe would further show that the granting of the injunctive relief sought herein would not prejudice or harm the Defendants, and alternatively, that the harm caused to Sharpe if the Defendants are not enjoined from destroying or damaging the documents outweighs any harm to the Defendants if injunctive relief is granted. Further, the granting of injunctive relief does not disserve the public interest as the Defendants should be enjoined from damaging or destroying the property of another and evidence of criminal acts.

20. Therefore, pursuant to Fed. R. Civ. P. 65, Sharpe seeks issuance of a temporary restraining order, restraining Defendants and their agents, servants, employees and anyone with access to the documents, from destroying or otherwise damaging in any manner the documents described above which are the subject of this case or

otherwise causing the documents to be illegible to Sharpe, until a hearing is had on Sharpe's application for a preliminary injunction. Sharpe further requests issuance of a preliminary injunction enjoining the Defendants and their agents, servants and employees, from destroying or otherwise damaging in any manner the documents described above which are the subject of this case or causing the documents to be illegible to Sharpe, during the pendency of this action. Sharpe further requests that on final hearing, the Defendants and their agents, servants and employees, be permanently enjoined from destroying or otherwise damaging in any manner the documents described above which are the subject of this case or causing the documents to be illegible to Sharpe.

CAUSE OF ACTION UNDER
42 U.S.C. § 1985(2) and (3)

21. As a direct and proximate result of the above described unlawful and malicious acts of the Defendants, Frances Sharpe was deprived of his property and concomitant right to the use of his property, which is in violation of his rights under the laws and Constitution of the United States, in particular the First, Fourth, Fifth and Fourteenth Amendments, and 42 U.S.C. §§1985(2) and (3). Based on the above facts, and based on information and belief, the Defendants conspired for the purpose of depriving Sharpe, either directly or indirectly, of the equal protection of the laws including Sharpe's First Amendment constitutional right to freedom of speech in violation of 42 U.S.C. §1985(3). The Defendants utilized the judicial system of the State of Texas to effectuate a conspiracy and prior restraint when the Defendants used the deposition

process for an unlawful purpose (theft), sought the appointment of Mr. Lockey through Judge Ashby, the order of impoundment and the legal sojourn the Defendants have forced Sharpe to trek until this day. As described above, the Defendants also conspired to unlawfully dispossess Sharpe of his property and prevent his further access to the documents by using the State judicial system, i.e., the deposition subpoena and subsequent proceedings before Judge Ashby, the Dallas Court of Appeals and currently with the Hon. Joe D. Clayton to cause injury to Sharpe, deprive him of his property and violate his First, Fourth, Fifth and Fourteenth Amendment Constitutional rights. Sharpe was the owner of the documents at the time of the deposition and has been deprived of their use by the Defendants' abuse of the State Judicial Process.

22. Further, based on the above facts, and based on information and belief, the Defendants conspired for the purpose of impeding, hindering, obstructing or defeating the due course of justice in the State of Texas with the intent to deny Sharpe the equal protection of the laws, or to injure Sharpe or his property for lawfully attempting to enforce Sharpe's rights to equal protection of the law in violation of 42 U.S.C. §1985(2). The Defendants' conduct as described above constituted a conspiracy to obstruct justice.

23. The object of the above described conspiracy in violation of § 1985(2) and (3) was to deprive Sharpe of equal protection under the laws because of his religion. After all, good Catholics are permitted ex-parte communications, the exercise of improper influence on the state judicial system to illegally deprive Sharpe of his documents in order to avoid their own criminal prosecution.

CAUSE OF ACTION UNDER 42 U.S.C. § 1983

24. Additionally, and based on the facts set forth above, Plaintiff also sues the Defendants under 42 U.S.C. §1983 for violating his federally protected constitutional rights, including: (1) his Fifth and Fourteenth Amendment right to due process of law; (2) his Fourth Amendment right to be free from unreasonable seizure; and (3) his First Amendment right to freedom of speech. The Defendants' conduct violated Plaintiff's well established constitutional rights and the Defendants failed to act in an objectively reasonable manner based on the clearly established law at the time Sharpe's property was unlawfully seized and taken from him.

25. Plaintiff would further show that the Defendants' deprivation of Plaintiff's constitutional rights occurred while the Defendants were acting under color of state law, were state actors and the Defendants abused the state judicial process with active participation and/or passive approval of Judge Ashby and Judge Clayton as alleged herein above.

WHEREFORE, Plaintiff demands the following relief, jointly and severally, against all of the Defendants:

1. A temporary restraining order, restraining Defendants and their agents, servants and employees, from destroying or otherwise damaging in any manner the documents described above which are the subject of this case or otherwise causing the documents to be illegible to Plaintiff, until a hearing is had on Plaintiff's application for a preliminary injunction;

2. A preliminary injunction enjoining the Defendants and their agents, servants and employees, from destroying or otherwise damaging in any manner the documents described above which are the subject of this case or causing the documents to be illegible to Plaintiff, during the pendency of this action;

3. On final hearing, a permanent injunction against Defendants from destroying or otherwise damaging in any manner the documents described above which are the subject of this case or causing the documents to be illegible to Plaintiff;

4. A declaratory judgment that the policies, practices, and acts complained of herein are illegal and unconstitutional and that the Plaintiff is the sole and rightful owner of the property in question and ordering the Defendants to transfer the property to the custody of a court appointed federal marshal for return to the Plaintiff;

5. Compensatory damages;

6. Punitive damages; and

7. Such other and further relief as this Court may deem appropriate, including costs and reasonable attorney fees.

Respectfully submitted,

LAW OFFICES OF JOHN E. WALL, JR.
5728 Prospect Avenue, Suite 2001
Dallas, Texas 75206
(214) 887-0100 (*telephone*)
(214) 887-0173 (*telecopy*)

/s/ John E. Wall, Jr.
John E. Wall, Jr.
State Bar No. 20756750
Attorney for Plaintiff

JURY REQUEST

Plaintiff hereby requests trial by jury.

PLAINTIFF'S CERTIFICATE OF INTERESTED PERSONS

COMES NOW, Plaintiff, Francis Sharpe, and files this his Certificate of Interested Persons pursuant to Local Rule 3.1(f). The following persons and entities have a financial interest in the outcome of the case:

Francis Sharpe
4107 Herschel #5
Dallas, Texas 75219

Roman Catholic Diocese of Dallas
3725 Blackburn
Dallas, Texas 75219

Reverend Charles Grahmann,
His predecessors and Successors,
as Bishop of the Roman Catholic Diocese
of Dallas
3725 Blackburn
Dallas, Texas 75219

Windle Turley
Law Office of Windle Turley, P.C.
1000 Turley Law Center
6440 North Central Expressway
Dallas, Texas 75206

Randal Mathis
3900 Trammel Crow Center
2001 Ross Avenue
Dallas, Texas 75201

Monte Fite
Law Office of Windle Turley, P.C.
1000 Turley Law Center
6440 North Central Expressway
Dallas, Texas 75206

/s/ John E. Wall, Jr.
John E. Wall, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to opposing counsel on this 24th day of April, 2002, as follows:

Via U.S. Mail
G. Dennis Sullivan
G. Dennis Sullivan, P.C.
3100 Monticello, Suite 725
Dallas, Texas 75205
(Attorneys for the Roman
Catholic Diocese of Dallas and
the Reverend Charles V. Grahmann,
his Predecessors and Successors, as
Bishop of the Roman Catholic Diocese)

Via U.S. Mail
Mark Donheiser
3900 Trammel Crow Center
2001 Ross Avenue
Dallas, Texas 75201
(Attorney for Randal Mathis)

/s/ John E. Wall, Jr.
John E. Wall, Jr.

AFFIDAVIT OF FRANCIS SHARPE

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this 24 day of April, 2002, personally appeared FRANCIS SHARPE, who, being duly sworn on his oath, deposed and said he is the Plaintiff in this case, and that every statement of fact contained herein is within his personal knowledge and is true and correct.

I have read the attached Plaintiff's Second Amended Complaint and the facts contained in Complaint are true and correct and are of my personal knowledge.

/s/ Francis A. Sharpe
FRANCIS A. SHARPE

SUBSCRIBED AND SWORN TO BEFORE ME on this the 24th day of April, 2002, to certify which witness my hand and official seal.

/s/ Gema L. Ramirez
Notary Public in and for
the State of Texas

My commission expires:
_____

[SEAL] Gema L. Ramirez
My Commission Expires
November 7, 2005